

Dobrich, et al.
Harvey L. Walls

v.
C.A. # 15-120 (JJF)

Indian River School District, et al.
October 25, 2006

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

4 MONA DOBRICH and MARCO)
DOBRICH, Individually and)
5 as parents and next friend)
of ALEXANDER DOBRICH,)
6 SAMANTHA DOBRICH, JANE DOE)
and JOHN DOE, Individually)
7 and as parents and next)
friend of JORDAN DOE and)
8 JAMIE DOE,)

17 APPEARANCES:

18 THOMAS ALLINGHAM, ESQUIRE

BRIAN LENHARD, ESQUIRE

19 One Rodney Square

Wilmington, Delaware 19801

20 For the Plaintiff

21

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Dobrich, et al.
Harvey L. Walls

v.
C.A. # 15-120 (JJF)

Indian River School District, et al.
October 25, 2006

1 APPEARANCES (cont'd):
2 JARROD SHAU, ESQUIRE
Drinker, Biddle & Reath, LLP
3 One Logan Square
18th and Cherry Streets
4 Philadelphia, Pennsylvania 19103-6996
For the Defendants

5 ALSO PRESENT:

6 TIMOTHY KEARNS
7 MARK BUCKMASTER, Video Specialist
8 - - -

9 VIDEO SPECIALIST: This is the videotape
10 deposition of Harvey L. Walls, taken by the plaintiff
11 in the matter of Dobrich, et al., versus Indian River
12 School District et al., Civil Action No. 05-120, held
13 at 31 Hosier Street in Selbyville, Delaware, on
14 October 25th, 2006, at approximately 1:32 p.m.

15 The court reporter is Terry Burke from
16 the firm of Wilcox & Fetzer. My name is Mark
17 Buckmaster, a video specialist with Discovery Video
18 Services, Incorporated, in association with Wilcox &
19 Fetzer.

20 Counsel will now introduce themselves and
21 the reporter will swear in the witness.

22 MR. ALLINGHAM: I'm Tom Allingham. I
23 represent the plaintiffs, and along with me are Tim
24 Kearns and Brian Lenhard.

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1 should try not to interrupt me or assume that you know
2 that what the answer to my question is, because the
3 court reporter can't take down both of us at once;
4 okay?

5 Do you know who the Doe family are?

6 A. No.

7 Q. Has anyone ever told you that they know who
8 the Doe family are?

9 A. Not to my knowledge.

10 Q. Have you spoken with anyone who has already
11 given their deposition in this matter?

12 A. I have spoken to Dr. Hattier and Mrs. Bunting.

13 Q. When did you speak to Dr. Hattier?

14 A. Oh, probably a week or two ago.

15 Q. And what was the substance of your
16 conversation, what did he say?

17 A. Just basically that it went quite a long time.

18 Q. Anything else?

19 A. We talked about, a little bit about the type
20 of stuff you might be covering or asking or something,
21 but exactly what I couldn't tell you.

22 Q. Do you recall that Dr. Hattier told you any
23 questions that he was asked?

24 A. No. He told me that you and him got into some

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1 MR. SHAU: I'm Jarrod Shau and I

2 represent the defendants in this action.
3 HARVEY L. WALLS,

4 the deponent herein, having first been
5 duly sworn on oath, was examined and
6 testified as follows:

7 BY MR. ALLINGHAM:

8 Q. Have you ever been deposed before, Mr. Walls?

9 A. Yes.

10 Q. When?

11 A. I'm not sure of the date. Somewhere around

12 the late 90's for a district staff employee that had

13 sued the district.

14 Q. I am going to ask you some questions. Please

15 tell me if you don't understand the question or if you

16 think it's ambiguous.

17 If you answer the question, I will

18 assume, and I think the judge and the jury will assume,

19 that you understood it. So let me know and I'll try to

20 fix the question if you have a problem.

21 You have to answer out loud yes or no,

22 not uh-huh or uh-uh.

23 And lastly, I freely confess that I tend

24 to interrupt people. I'll try not to do that. You

1 philosophical discussion.

2 Q. You can imagine that's difficult with
3 Dr. Hattier?

4 A. I have been sitting on the board with him for
5 quite a few years, I could imagine.

6 Q. And Mrs. Bunting, what did you talk about with
7 Mrs. Bunting?

8 A. She had mentioned some things that she didn't
9 think made her sound very smart because she didn't know
10 the answers to them. I think it kind of made her look
11 as if she weren't very smart.

12 And specifically I couldn't tell you

13 just what they were.

14 Q. To prepare for the deposition today, you met
15 with lawyers for the district?

16 A. Yes.

17 Q. That's Mr. Shau and Mr. Gosselin?

18 A. Yes.

19 Q. Was anyone else present?

20 A. Yes.

21 Q. Who was present?

22 A. Other people that were to be disposed as well.

23 Elaine McCabe and Robert Wilson, and I think that's it.

24 Q. Were you shown any documents during the

2 (Pages 2 to 5)

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1 preparation session?	1 A. Yes.
2 A. No.	2 Q. And do you then file it somewhere?
3 Q. Do you have an e-mail address that ends with	3 A. My filing system is whichever pile it goes
4 irsd.net?	4 into, or that's what it had been over the years.
5 A. No.	5 Q. You say that's what it had been over the
6 Q. Do you maintain any e-mail accounts?	6 years. Did you change it?
7 A. I have an e-mail account at work.	7 A. I'm no longer on the board.
8 Q. Do you have one at home as well?	8 Q. I understand.
9 A. I got one, but I don't even know what it is.	9 When you went off the board, what did
10 Q. All right. Do you ever receive e-mail	10 you do with your piles relating to the school board?
11 communications from the district regarding your duties	11 A. Anything I found regarding the school prayer
12 as a school board member?	12 issue or regarding this case was turned over to the
13 A. No, I never do.	13 school secretary.
14 Q. When you get a board package, I take it it's	14 Q. Okay. So at some point a request was made to
15 hand delivered to you?	15 you to look through your --
16 A. Yes.	16 A. Yes.
17 Q. We had testimony this morning from Susan	17 Q. You have to let me finish my question.
18 Bunting that periodically she receives updates via	18 -- look through your stacks of documents
19 e-mail from the Drinker Biddle firm which represents	19 relating to the school board and you turned over to the
20 the district in this case. She did not know who else	20 school secretary anything you found that you thought
21 was on the distribution list for those updates.	21 related to this case?
22 Are you on the distribution list?	22 A. Yes.
23 A. Yes.	23 Q. Okay. And the school secretary is?
24 Q. And do you receive those updates via e-mail?	24 A. Janet Hearn.
Page 7	Page 9
1 A. Yes.	1 Q. Was it Mrs. Hearn or Miss Hearn?
2 Q. All right. So you do get communications	2 A. Mrs. Hearn.
3 regarding school board issues via e-mail from time to	3 Q. Was it Mrs. Hearn who asked you to look
4 time?	4 through your files?
5 A. Just regarding this particular case.	5 A. Either Mrs. Hearn or one of her attorneys.
6 Q. Yes, that's the one I'm worried about today.	6 Q. And was that request in writing or orally?
7 In addition to the updates from Drinker	7 A. I can't remember. It could very well have
8 Biddle lawyers, have you received any other e-mail	8 been both.
9 communications relating to this case?	9 Q. Prior to your search for documents, did you
10 A. No.	10 ever receive a communication from anyone urging you not
11 Q. Have you received any e-mail communications	11 to destroy any documents relating to this case?
12 regarding the school board prayer policy?	12 A. Yes, I think our original attorneys had sent
13 A. Not that, to my knowledge, no.	13 us something.
14 Q. Do you use a fax machine?	14 Q. All right. And did you try to preserve all --
15 A. Yes.	15 A. Yes.
16 Q. Have you received faxes concerning school	16 Q. -- documents relating to this case?
17 board meetings?	17 A. Yes.
18 A. Concerning school board meetings?	18 Q. When you turned all those documents over to
19 Q. Yes.	19 the school secretary, did you retain copies of them?
20 A. I'm sure I have.	20 A. No.
21 Q. Have you received faxes concerning this case?	21 Q. When were you elected to the school board?
22 A. Probably.	22 A. 1992 I believe was my first term.
23 Q. When you receive a fax concerning this case,	23 Q. And you went off the school board earlier this
24 what do you do with it? I assume you read it?	24 year?

3 (Pages 6 to 9)

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1 **A. Yes, July 1st.**
 2 Q. So that's 14 years, roughly speaking --
 3 **A. Yes.**
 4 Q. -- of service.
 5 During that period of time, is it
 6 correct that the board had a practice of opening its
 7 regular meetings with a prayer?
 8 **A. Yes.**
 9 Q. And were those prayers sectarian or
 10 non-sectarian?
 11 **A. Probably most of them were -- honestly I'm not**
 12 **sure what sectarian and non-sectarian, the actual**
 13 **definitions are.**
 14 Q. So you can't answer the question?
 15 **A. Well, if I knew the definition of**
 16 **non-sectarian and sectarian, I could answer the**
 17 **question.**
 18 Q. I may be able to help you out in a minute.
 19 We have previously marked as -- we are
 20 running out of copies of this -- but we have previously
 21 marked as PX-9 what has been identified as the actual
 22 board prayer policy.
 23 **A. Uh-huh.**
 24 Q. This is policy BDA.1 and you'll see --

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1 Q. And it continues on.
 2 In the process of drafting this policy,
 3 what did you understand sectarian and non-sectarian to
 4 mean?
 5 **A. Well, I never knew what they meant at all. I**
 6 **never even looked at the terms until all this started.**
 7 Q. I'm sorry, you never looked at the terms of
 8 the policy you were considering --
 9 **A. No --**
 10 Q. Let me finish my question, sir.
 11 You never looked at the terms of the
 12 policy you were considering and ultimately voting on
 13 until this litigation started?
 14 **A. No. I said I never actually looked at**
 15 **non-sectarian or sectarian definitions at all until all**
 16 **this case started.**
 17 Q. Well, when you --
 18 **A. Or not the actual case. When the original**
 19 **complaint came to the board.**
 20 Q. When you voted to adopt Board Policy BDA.1,
 21 what was your understanding of what sectarian and
 22 non-sectarian meant?
 23 **A. Well, my understanding after reading this of**
 24 **non-sectarian means basically that you could name a**

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1 MR. SHAU: They'll do anything to get rid
 2 of you down here, Tom.
 3 MR. ALLINGHAM: Is that noise going to
 4 show up?
 5 VIDEO SPECIALIST: I can hear you well
 6 over it, but it's just in the background. If you want
 7 to go off the record until it's done?
 8 MR. ALLINGHAM: That's all right. We
 9 need to finish.
 10 BY MR. ALLINGHAM:
 11 Q. You'll see at the lower left that it was
 12 adopted on October 19th, 2004?
 13 **A. Uh-huh.**
 14 Q. All right. And this was a policy that emerged
 15 from the policy committee that you chaired; is that
 16 correct?
 17 **A. That's correct.**
 18 Q. And so you, I take it, were involved in
 19 leading the drafting process?
 20 **A. Yes.**
 21 Q. In Paragraph 5 of this policy, you'll see that
 22 it reads, "Any such prayers may be sectarian or
 23 non-sectarian.
 24 **A. Uh-huh.**

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1 **supreme being, being Jehovah or Jesus or Buddha or**
 2 **Allah and whatever. And sectarian I take to mean as**
 3 **you can't, it would be basically a generality, only**
 4 **mentioning God and nothing else.**
 5 Q. All right. So taking that as the definition
 6 of sectarian and non-sectarian, the prayers that were
 7 offered over the 14 years of your service on the board,
 8 were they sectarian or non-sectarian?
 9 **A. I would say 90 percent were probably**
 10 **non-sectarian.**
 11 Q. Non-sectarian?
 12 **A. Yes.**
 13 Q. So would I be correct in understanding that
 14 the board's practice over the 14 years of your tenure
 15 was to offer non-sectarian prayers to open its
 16 meetings?
 17 **A. I don't know that that was a practice. I**
 18 **don't know that anyone in particular was told give**
 19 **non-sectarian or sectarian prayer, to my knowledge.**
 20 **Whoever gave the prayer gave the prayer however they**
 21 **wanted to give it.**
 22 Q. All right.
 23 Who drafted BDA.1?
 24 **A. This was drafted by Tom Neuberger.**

4 (Pages 10 to 13)

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1 Q. How long did the policy committee consider the
 2 board prayer policy before it presented the proposed
 3 policy to the full board for first reading?
 4 **A. Just long enough to get it into draft form.**
 5 **In other words, assigning the letters to it.**
 6 **The actual wording in it was not left up**
 7 **to the policy committee. It was brought to the board**
 8 **by myself.**
 9 Q. Was the actual language of the board prayer
 10 policy considered by the policy committee at any time?
 11 **A. No.**
 12 Q. How long did you serve on the policy
 13 committee?
 14 **A. Out of 14 years, probably 11 or 12.**
 15 Q. Okay. Was there an ordinary process for the
 16 drafting, consideration and adoption of board policies?
 17 **A. The normal process would be it would come**
 18 **through the policy committee and then from the policy**
 19 **committee to me or the policy committee chairman would**
 20 **bring it to the board.**
 21 Q. What was the normal process for drafting a
 22 policy?
 23 **A. Various.**
 24 Q. Tell me the ways that you went about drafting

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1 the full board?
 2 **A. Probably a district administrator off the**
 3 **policy committee that sent it to Mr. Griffin.**
 4 Q. Who would that be?
 5 **A. I don't know. It could be Mr. Savage or**
 6 **Mrs. Bunting.**
 7 Q. That would be Susan Bunting?
 8 **A. Yes.**
 9 Q. How did it come about that the policy
 10 committee undertook to consider a school board prayer
 11 policy?
 12 **A. Because of the original complaint from**
 13 **Mrs. Dobrich.**
 14 Q. And would you describe how that original
 15 complaint was transmitted to, either to the board or to
 16 the policy committee?
 17 **A. The original complaint I think had to do with**
 18 **graduation services and baccalaureate services.**
 19 **During, there was also a complaint at a public meeting**
 20 **I think in August or so of that year about prayer at**
 21 **board meetings. I believe that complaint came from the**
 22 **ACLU representative who was there.**
 23 **At that point, that's where the policy**
 24 **committee got looking at three different areas of the**

1 the policy?
 2 **A. It all depends on the type of policy that it**
 3 **was. I mean sometimes the board would think that a**
 4 **policy would be needed in a certain area and they would**
 5 **make a recommendation to the policy committee and they**
 6 **would then consider it, come back with a draft.**
 7 **Other times it could be that the state,**
 8 **department of education or federal education department**
 9 **would come down and say, you need to have a policy in**
 10 **this area. Then it would go through a policy committee**
 11 **and to the board.**
 12 **Many times also it would go to the**
 13 **district's lawyer before it would come to the board.**
 14 Q. Who was the district's lawyer in 2004?
 15 **A. James Griffin.**
 16 Q. Did this policy go to the district's lawyer?
 17 **A. I believe it did, but I can't say for sure.**
 18 Q. Well, in 2004, you were the president of the
 19 board; correct?
 20 **A. I think so.**
 21 Q. And you were the head of the policy committee?
 22 **A. Yes.**
 23 Q. Who would know better than you whether this
 24 policy went to the district's lawyer before it went to

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1 **religion policy. We at that time had not in force.**
 2 Q. Let me just see if I can establish a couple
 3 points out of that answer. First, in the summer of
 4 2004, the board had no policies on graduation prayer,
 5 religion, or board prayer?
 6 **A. Not to my knowledge.**
 7 Q. Mrs. Dobrich made a complaint about prayer at
 8 graduation; correct?
 9 **A. Yes.**
 10 Q. And that was a complaint that was communicated
 11 orally to Miss Hobbs and subsequently to you; is that
 12 correct?
 13 **A. That's correct.**
 14 Q. Do you recall that Mrs. Dobrich later
 15 complained about, generally about religion in the
 16 schools?
 17 **A. I think she may have said something along that**
 18 **line at public comments at a board meeting.**
 19 Q. Do you recall that Mrs. Dobrich made a
 20 complaint about prayer at school board meetings?
 21 **A. I don't recall that she did. I do recall that**
 22 **the ACLU representative did.**
 23 Q. All right. And was it after the comment by
 24 the ACLU representative that the policy committee first

5 (Pages 14 to 17)

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1 began consideration of school board prayer?
 2 **A. It was along that time.**
 3 Q. Along that time is maybe different from after?
 4 **A. My recollection is that three board policies**
5 concerning religion, board prayer, and there were two
6 others concerning religion, were introduced to the
7 board on the first reading about September of that
8 year.
 9 Q. Correct.
 10 **A. And I think the second reading was in October.**
 11 Q. Correct.
 12 **A. The initial complaint I believe came after the**
13 graduation in June.
 14 Q. Correct.
 15 **A. So the policy committee in July and August**
16 would have looked at all of those and brought to the
17 board in September.
 18 Q. All right.
 19 Was it you who was in charge of the
 20 Policy Committee's development of the new policies?
 21 **A. Yes.**
 22 Q. I take it, then, that you contacted
 23 Mr. Neuberger to ask for a draft of a policy on school
 24 board prayer?

Page 20

1 **A. I would say it was an assumption.**
 2 Q. Did you contact Mr. Neuberger or did
 3 Mr. Neuberger contact you?
 4 **A. That I don't remember just who contacted**
5 Mr. Neuberger first. It could very well have been
6 another board member.
 7 Q. Mr. Helms?
 8 **A. I don't know if it was Mr. Helms or**
 9 **Dr. Hattier.**
 10 Q. When you were president of the board, were
 11 individual board members authorized to contact lawyers
 12 to represent the board?
 13 **A. On an instance like this, I may very well have**
 14 **authorized them to do so, to contact someone. But they**
 15 **certainly weren't authorized to sign a retainer with**
 16 **anybody.**
 17 Q. And is it also true that without authorization
 18 from the board president or a full vote of the board,
 19 individual board members were not authorized to contact
 20 lawyers individually?
 21 **A. That would depend on the case. I mean**
 22 **certainly when the district gets sued, especially**
 23 **lawyers have a tendency to name board members**
 24 **individually in their lawsuits, as was the case with**

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1 **A. I had discussions with Mr. Neuberger.**
 2 Q. How did you come to be in contact with
 3 Mr. Neuberger on that topic?
 4 **A. We had, after the original complaint and a**
5 threat of lawsuit, we had contact with Mr. Neuberger.
 6 Q. Okay. Let me get some timing down. The
 7 original complaint was on June 3rd, that was the day of
 8 the graduation?
 9 **A. Shortly thereafter --**
 10 Q. I'll represent to you it was June 3rd.
 11 **A. -- I would think.**
 12 Q. When was the first threat of litigation
 13 communicated to you?
 14 **A. I -- I'm not sure.**
 15 Q. When did you first contact Mr. Neuberger?
 16 **A. I don't know. I don't know when he was**
17 contacted.
 18 Q. Is it correct that your first contact with
 19 Mr. Neuberger came after a threat of litigation was
 20 made?
 21 **A. I would say so.**
 22 Q. And was that a threat of litigation that was
 23 explicit or did you just assume that litigation would
 24 ensue?

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1 **this one.**
 2 Q. When was this lawsuit filed, sir?
 3 **A. I have no idea. I'd say --**
 4 Q. February 28th, 2005.
 5 **A. Okay.**
 6 Q. The board policies were adopted in October of
 7 2004; is that right?
 8 **A. That's correct.**
 9 Q. Did you receive any threat of litigation at
 10 any time, an explicit threat, up until the adoption of
 11 the policies in 2004?
 12 **A. I'm not sure of an explicit threat.**
 13 Q. Do you recall requests by representatives of
 14 Mrs. Dobrich for clarification of the policies after
 15 they were passed?
 16 **A. Yes.**
 17 Q. Do you recall that those requests explicitly
 18 said that Mrs. Dobrich's representatives hoped to act
 19 in a constructive way with the board?
 20 **A. I remember it.**
 21 Q. Do you know whether any response was made to
 22 Mrs. Dobrich's representatives?
 23 **A. I think the response from the board was that,**
24 no, we would not meet with them.

6 (Pages 18 to 21)

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1 Q. How about answering the questions that were
2 posed?

3 A. **No, we were not going to answer the questions.**

4 Q. And why was it that you decided not to answer
5 the questions or otherwise to respond to Mrs. Dobrich's
6 representatives?

7 A. **Under the advice of an attorney.**

8 Q. Which attorney was that?

9 A. **Mr. Neuberger.**

10 Q. Was Mr. Neuberger representing the board?

11 A. **At that time, no.**

12 Q. So the board chose not to respond to
13 Mrs. Dobrich on the basis of advice from a lawyer who
14 was not representing the board; is that correct?

15 A. **He was advising the board.**

16 Q. What's the difference?

17 A. **We certainly weren't paying him and we had not
18 signed a retainer with him.**

19 Q. How did you decide which lawyer that you had
20 not retained -- strike that.

21 I asked you earlier whether
22 Mr. Neuberger contacted you or you contacted
23 Mr. Neuberger and you said the first contact with
24 Mr. Neuberger may have been with another board member.

Page 24

1 Q. So whether you know what TRI is or not, have
2 you ever seen PX-34 before?

3 A. **I could have. It looks to be some type of
4 press release.**

5 Q. There is a fax line at the top showing that it
6 was sent by the Neuberger firm to someone on
7 August 19th, 2004. I will represent to you that this
8 document was produced from the district's files. So
9 some way this document found its way into the
10 district's files.

11 If you look at the fax line at the top,
12 you'll also see that this is the fourth page of a
13 four-page transmission.

14 Do you know what the other three pages
15 were?

16 A. **I have not a clue.**

17 Q. About halfway down the page of PX-36, you will
18 see that there's a statement that begins, "So one
19 member of the Indian River School Board," do you see
20 that?

21 A. **Yes.**

22 Q. "So one member of the Indian River School
23 Board has asked The Rutherford Institute in Virginia
24 for help in standing up to the ACLU. That was vice

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1 Do you recall that testimony?

2 A. **Yes.**

3 Q. Is it your belief that Mr. Neuberger spoke to
4 another board member before he spoke to you?

5 A. **Could have.**

6 Q. You don't know one way or another?

7 A. **No.**

8 Q. Do you have any memory of how -- of the first
9 contact between Mr. Neuberger and a board member?

10 A. **The first contact, no.**

11 Q. I am going to show you what we have previously
12 marked as PX-36.

13 A. **(Pause.)**

14 Q. Have you ever seen that document before?

15 A. **I don't believe I have because I don't know
16 what TRI is.**

17 Q. The testimony has been that that's The
18 Rutherford Institute.

19 A. **Okay.**

20 Q. Do you know what The Rutherford Institute is?

21 A. **Yes.**

22 Q. That's an institution with which Mr. Neuberger
23 is affiliated; is that right?

24 A. **Yes.**

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1 president Reginald Helms."

2 Does that refresh your recollection that
3 it was Mr. Helms who first contacted Mr. Neuberger?

4 A. **It could have been.**

5 Q. You still don't recollect?

6 A. **I'm not sure.**

7 Q. Did the board ever retain Mr. Neuberger or The
8 Rutherford Institute to represent it in connection with
9 this lawsuit and the issues presented?

10 A. **Technically, no.**

11 Q. And did Mr. Helms ever retain Mr. Neuberger to
12 represent him individually in connection with this
13 lawsuit?

14 A. **I believe he did.**

15 Q. And how do you know that Mr. Helms retained
16 Mr. Neuberger?

17 A. **I believe he announced that to the board.**

18 Q. Do you know whether Mr. Helms signed a
19 retention agreement with Mr. Neuberger?

20 A. **I would not know.**

21 Q. Is it your practice as board president when
22 you retain a lawyer or a law firm on the district's
23 behalf to sign a retention agreement with that lawyer?

24 A. **The actual board president, no. It may very**

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1 **well have been the superintendent.**
 2 Q. It is the practice of the district when it
 3 retains lawyers to execute a retention agreement; is
 4 that right?
 5 A. **I believe so.**
 6 Q. Okay.
 7 Let me show you what's been marked as
 8 PX-34.
 9 I gather that you have seen this
 10 document?
 11 A. **I am sure I have.**
 12 Q. The first page reflects it was faxed from
 13 Mr. Helms to you on September 2nd, 2004; is that
 14 correct?
 15 A. **That's what it says on the front.**
 16 Q. You have no reason to doubt that, do you?
 17 A. **No.**
 18 Q. Looking at the content of the fax, do you
 19 recall having seen this document?
 20 A. **I am sure I have seen it. I just don't**
 21 **necessarily remember it.**
 22 Q. Look at the next to the last page of the
 23 package which we have marked. Down at the bottom of
 24 the page, you will see that there are five numbered

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1 board --
 2 A. **I did not recommend that all these other pages**
 3 **be part of the policy.**
 4 Q. In making that recommendation and ultimately
 5 voting to adopt policy BDA.1 on school board prayer,
 6 did you take into consideration as one factor in your
 7 decision the material provided by Mr. Neuberger in
 8 PX-34?
 9 A. **Well, obviously I considered the last two**
 10 **pages.**
 11 Q. Yes, that seems clear. Did you also take into
 12 account the materials provided in the first four pages
 13 of the fax?
 14 A. **I certainly read them.**
 15 Q. And did you take them into account?
 16 A. **Yes.**
 17 Q. The information provided was one of the
 18 factors that you considered in voting to adopt the
 19 policy; is that right?
 20 A. **Yes.**
 21 Q. On Page 2 of Mr. Neuberger's memo, about
 22 two-thirds of the way down the page in the last whereas
 23 clause on that page, PX-34 reflects, "The school board
 24 has retained the legal advice" -- sorry. I'll start

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1 paragraphs continuing over to the last page.
 2 A. **Uh-huh.**
 3 **Right.**
 4 Q. Are they substantively identical to the board
 5 policy as adopted?
 6 A. **They are.**
 7 Q. Is this the document in which Mr. Neuberger
 8 transmitted to you, apparently through Mr. Helms, the
 9 text of the policy that you prepared to the board on
 10 September 29th?
 11 A. **Yes.**
 12 Q. And is this the first time that this text was
 13 transmitted to you from Mr. Neuberger?
 14 A. **I don't know.**
 15 Q. When you received this document, PX-34, did
 16 you review it?
 17 A. **Yes.**
 18 Q. Did you see anything in it that you thought
 19 was inaccurate?
 20 A. **I don't know about inaccuracies, but I believe**
 21 **I recollect, after seeing it, my recommendation to the**
 22 **board was the numbered items as policies on the last**
 23 **two pages as the actual policy.**
 24 Q. Yes, sir. You recommended to the full

1 again.
 2 "The school board has obtained the legal
 3 advice of two competent and experienced constitutional
 4 attorneys, John W. Whitehead, Esquire, and Thomas S.
 5 Neuberger, Esquire, that prayer to open board meetings
 6 is constitutional in the United States Court of Appeals
 7 for the Third Circuit, which includes Delaware, and
 8 legal counsel have identified the following legal
 9 authority in support of their legal opinion."
 10 A. **Yes, sir.**
 11 Q. That legal authority and legal opinion is the
 12 material in this fax up to the five numbered paragraphs
 13 at the end; is that correct?
 14 A. **Right.**
 15 Q. And that's what you, one of the factors that
 16 you relied on in voting to adopt the policy?
 17 A. **Yes.**
 18 Q. So I take it that the whereas clause that I
 19 just read to you is, in your view, accurate?
 20 A. **Yes.**
 21 Q. On the next page in the fourth full
 22 paragraph -- it's a short paragraph -- Mr. Neuberger's
 23 materials read, "It is the opinion of legal counsel
 24 that since the Indian River School Board of Education

8 (Pages 26 to 29)

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1 is a public legislative and deliberative body, it has
2 its rights to open its meetings with a prayer." Do
3 you see that?

4 **A. Yes.**

5 Q. And the opinion of legal counsel is, the legal
6 counsel involved is Mr. Neuberger; correct?

7 **A. Yes.**

8 Q. And the opinion that he gave you in that
9 respect is reflected in this document?

10 **A. Yes.**

11 Q. On the next to the last page of PX-34, about
12 two-thirds of the way down the page, right before the
13 numbered paragraphs, you'll see that Mr. Neuberger's
14 materials report, "Thus it is the opinion of legal
15 counsel that the Supreme Court's decision in Marsh
16 versus Chambers, which, unlike the Coles' decision, is
17 binding precedent in Delaware, compels the conclusion
18 that the Indian River School District's tradition of
19 opening its meetings with a brief invocation is
20 constitutionally permissible."

21 The legal counsel involved there is
22 Mr. Neuberger?

23 **A. Yes.**

24 Q. And the opinion that was rendered is this

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1 Q. So the list that I have so far is
2 Mr. Griffin --
3 **A. Uh-huh.**
4 Q. -- Mr. Neuberger, Messrs. Balaguer and
5 Cafferkey, the John and John?
6 **A. Right.**
7 Q. The Drinker firm, Jason and Jarrod's firm, and
8 Mr. Kellum of the Alliance Defense Fund?
9 **A. Yes.**
10 Q. Did the board receive advice from anyone else
11 on the topic of school board prayer?
12 **A. Not any other attorneys that I'm aware of.**
13 Q. And now I want to clarify the timing. Up to
14 the point of adoption of the policy on October 19th,
15 2004, am I correct that you had received advice from
16 three lawyers, Mr. Griffin, Mr. Kellum, and
17 Mr. Neuberger?
18 **A. I'm not sure of the timing of Mr. Kellum,
19 whether that was before or after the adoption of the
20 policies.**
21 Q. Okay. Neuberger and Griffin offered advice
22 before the adoption of the policy?
23 **A. Yes.**
24 Q. And is it fair to say that you took into

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1 document that we have before us; correct?
2 **A. I would say so.**
3 Q. That's what you understood it to be?
4 **A. Yes.**
5 Q. Did any other lawyer give you advice on the
6 topics of the legal opinions that I just read to you
7 from PX-34?
8 **A. I think Mr. Griffin gave us some advice,
9 written advice.**
10 Q. Anybody else?
11 **A. I believe there was a lawyer from Tennessee
12 with the ADF, the Alliance Defense Fund.**
13 Q. That's Mr. Kellum?
14 **A. Yes.**
15 Q. Anybody else?
16 **A. Legal advice?**
17 Q. Yes, sir.
18 **A. From a lawyer?**
19 Q. Yes, sir.
20 **A. Of course we had our insurance attorneys, John
21 and John.**
22 Q. Okay. Anyone else besides --
23 **A. And since then, Jason, Drinker -- the current
24 firm that we're --**

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1 account in voting to adopt the policy the advice of
2 Mr. Neuberger and Mr. Griffin?
3 **A. Yes.**
4 Q. And with Mr. Kellum you don't know whether it
5 was before or after?
6 **A. I can't recollect the exact timing of talking
7 to him.**
8 Q. Do you know who requested Mr. Neuberger to
9 draft the board policy on school board prayer?
10 **A. Not specifically.**
11 Q. Was it you?
12 **A. It could have been.**
13 Q. But you don't recall?
14 **A. I can't remember.**
15 Q. It would have been out of the ordinary for
16 someone else to have done it since you were the
17 chairman of the policy committee; is that right?
18 **A. Probably. If it was another board member, it
19 could have come from me asking the other board member
20 to ask him.**
21 Q. Did Mr. Helms serve on the policy committee?
22 **A. No.**
23 Q. Was there some reason why Mr. Neuberger's
24 draft policy came through Mr. Helms rather than to you

9 (Pages 30 to 33)

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1 directly?

2 A. It could have been I could have asked him for
3 his recommendation.

4 Q. You asked Mr. Helms for his recommendation?

5 A. No. It could have been I asked Mr. Helms to
6 ask Mr. Neuberger for the recommendation.

7 Q. Why wouldn't you just ask Mr. Neuberger
8 directly?

9 A. I'm just saying it could have been that way.

10 I can't remember that I didn't ask Mr. Neuberger.

11 Q. Yes. And I'm saying that if you did ask
12 Mr. Helms to ask Mr. Neuberger, I'm asking, why would
13 you have done it that way? Why wouldn't you just call
14 Mr. Neuberger yourself?

15 A. I don't know. I don't know the timing of it.

16 It could have been that Mr. Helms was the only one who
17 had a retainer with Mr. Neuberger.

18 Q. Am I correct that you recommended the policy
19 drafted by Mr. Neuberger to the full board without any
20 change?

21 A. There was a change.

22 Q. What was the change?

23 A. I believe from this PX-34, this was a
24 recommendation -- recommended policy from

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1 this meeting." Whereas you look at Mr. Neuberger's
2 recommendation it says, "It is the policy of the board
3 to open its meetings with a moment of silence in
4 accordance with the freedom of conscious of individual
5 board members," so I did change that somewhat.

6 Q. And do you know why you changed it?

7 A. Whenever making a policy, the first objective
8 of the policy committee is to make a policy workable
9 within a school district.

10 Mr. Neuberger doesn't work for a school
11 district. One of the things I changed there by "may
12 choose to open this meeting," basically in my
13 meeting -- or my impression is that means the board
14 doesn't have to open a meeting with a board prayer by
15 putting the word "may choose to" in there.

16 Q. Yes, sir.

17 A. And I would say that's why I did that.

18 Q. Okay. And was it you who made that change?

19 A. Yes.

20 Q. In the process of taking Mr. Neuberger's draft
21 and converting it into the final proposal that you
22 delivered to the board --

23 A. Uh-huh.

24 Q. -- was there anyone involved other than you?

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1 Mr. Neuberger. The policy that I recommended, I put in
2 draft form to go to the board consisted of only the
3 last five items.

4 Q. Apart from that, that is to say, in the
5 text -- let me start again.

6 The text of the five numbered
7 paragraphs, that was unchanged from what Mr. Neuberger
8 sent you; correct?

9 A. You have them here. I don't know word for
10 word if they're identical. They could very well be.

11 Q. They are not perfectly identical, Mr. Helm --
12 -- I'm sorry, Mr. Walls, but there's no change in the
13 meaning. I want to talk to you about how -- well,
14 here, let's do it.

15 If you look at the five numbered
16 paragraphs of PX-34 and compare them to PX-9, you will
17 see that in Paragraph 1 the final policy reads, "In
18 order to solemnify its proceedings," and in
19 Mr. Neuberger's draft it says, "In order to solemnify
20 school board proceedings." No substantive change;
21 correct?

22 A. There is a substantive change in Item No. 1.
23 If you look at the first sentence, it says, "The board
24 of education on the actual policy may choose to open

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1 A. No.

2 Q. Okay.

3 So to come back to my earlier question,
4 the change from "in order to solemnify its proceedings"
5 to "in order to solemnify school board proceedings,"
6 can we agree that's a non-substantive change?

7 A. I think it's a substantive change.

8 Q. Did you think that "its" -- sorry. You
9 understood "its" in your draft to be different
10 from "school board"?

11 A. I understand where it says "it is the
12 policy" --

13 Q. No, sir. I'm just looking at the first
14 clause. Just the "in order to solemnify its
15 proceedings," "in order to solemnify school board
16 proceedings," that's not a substantive difference,
17 correct, that first clause?

18 A. That's correct.

19 Q. Okay. We have spoken about the change from
20 "it is the policy of the board" to "the board of
21 education may choose," and you've described that in the
22 one you viewed that as requiring a board to open its
23 meetings with a prayer, whereas in the draft that you
24 created it was the board of education may, but doesn't

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1 have to; correct?	1 sets forth the purpose of the prayer or moment of
2 A. Right.	2 silence offered by the board member, which is to
3 Q. The second paragraph, there is a, I think, a	3 solemnify its proceedings?
4 minor change, but let's just confirm that it is a minor	4 A. Yes.
5 change. The Neuberger draft says, "On a rotating	5 Q. When you voted to adopt this policy, what did
6 basis, one individual adult board member per meeting	6 you understand the phrase "to solemnify its
7 will be given the opportunity to offer a prayer or	7 proceedings" meant?
8 moment of silence," and in your draft, there is a	8 A. Just to impress upon the importance of a
9 change to, "to offer a prayer or request a moment of	9 regular meeting, just to ask for guidance in making the
10 silence."	10 proper decisions.
11 Do you see the difference?	11 Q. I understand that to be two separate goals,
12 A. Yes.	12 one to impress on the board members that they needed to
13 Q. And am I right that that's not a substantive	13 take their responsibility seriously in the meeting that
14 change, you just thought that you were drafting it more	14 was coming up; is that right?
15 clearly by saying "request a moment of silence"?	15 A. Uh-huh.
16 A. That's correct.	16 Q. And the second one was to seek divine guidance
17 Q. In the third paragraph, would you agree with	17 for the decisions that would be made; is that correct?
18 me there are no changes from the Neuberger draft to	18 A. Yes.
19 your draft?	19 Q. Do you know whether the board prayer policy
20 A. Yes.	20 was ever discussed at a policy committee meeting?
21 Q. The fourth paragraph there is a very modest, I	21 A. I don't believe it was. Other than to ask for
22 think a very modest change in the first sentence. The	22 its proper format from the other policy members. Me as
23 Neuberger draft reads, "Such prayer is voluntary and it	23 a board member, I don't know just exactly what letter
24 is just among the adult members of the board." Your	24 to assign. That's the format I'm saying. I mean the
1 draft reads, "Such prayer is voluntary and it is among	1 actual substance of the board policy, no, it was not
2 only the adult members of the board."	2 discussed at that meeting.
3 That's not a substantive change, you	3 Q. Are most board policies discussed at a policy
4 just thought your draft was clearer; correct?	4 committee meeting?
5 A. Correct.	5 A. Yes.
6 Q. And can we agree that the second sentence of	6 Q. Why was this one not discussed?
7 the fourth paragraph is unchanged from Mr. Neuberger's	7 A. Because I did not want to subject the
8 draft?	8 administrators on the policy committee to any portion
9 A. Yes.	9 of that policy because I figured -- I thought this was
10 Q. And the fifth paragraph is unchanged from the	10 a policy completely affecting the board.
11 Neuberger draft; is that right?	11 Q. And only the board?
12 A. Correct.	12 A. Yes.
13 Q. Okay.	13 Q. Okay. And that's reflected in the first
14 Now, I take from the fact that you made	14 sentence of Paragraph 4, "Such prayer is voluntary and
15 changes in the draft, including ones what you viewed as	15 it is among only the adult members of the board"?
16 a substantive change in the draft, that you read and	16 A. Yes.
17 carefully considered Mr. Neuberger's draft?	17 Q. I take it that it was your view that to
18 A. Yes.	18 accomplish its purpose, that is, to solemnify its
19 Q. Paragraph 1 of the draft appears to specify	19 proceedings, the board could accomplish that purpose by
20 what the purpose of the prayer or a moment of silence	20 having a member open its meeting with a prayer;
21 is in that it says, "In order to solemnify its	21 correct?
22 proceedings, the board of education may choose to open	22 A. Yes.
23 its meetings with a prayer or moment of silence."	23 Q. That would be an effective way to solemnify
24 Would you agree with me that the policy	24 the proceedings?

11 (Pages 38 to 41)

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1 **A. Yes.**
 2 Q. The board of education could also solemnify
 3 its proceedings by having a member request a moment of
 4 silence; correct?
 5 **A. That's correct.**
 6 Q. And that would be an effective way to
 7 solemnify the proceedings?
 8 **A. Yes.**
 9 Q. At the October 19th, 2004 board meeting when
 10 the policy was adopted, you were president of the
 11 board; correct?
 12 **A. I'm sure I was.**
 13 Q. And did you invite someone to open the meeting
 14 with a prayer or moment of silence?
 15 **A. I'm sure I did.**
 16 Q. Do you know whether you read a disclaimer of
 17 some kind before the member offered the moment of
 18 silence or the prayer?
 19 **A. I probably did.**
 20 Q. Did you have it written down?
 21 **A. Yes.**
 22 Q. Do you know what the text of that disclaimer
 23 consisted of?
 24 **A. Not after having not read it for a year and a**

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1 the board could take place outside of the regular
 2 meeting immediately before the meeting?
 3 **A. It could, but in my mind, that wouldn't**
 4 **solemnify the meeting.**
 5 Q. Could you explain to me why not?
 6 **A. The actual board meeting is the board's**
 7 **meeting that happens to be held in public. I would say**
 8 **that there are Sunshine Laws that would prohibit the**
 9 **board from getting together before the meeting and then**
 10 **going in and holding the meeting.**
 11 Q. Have you completed your answer?
 12 **A. To my knowledge, the board can't meet unless**
 13 **it advertises the meeting and opens it to the public.**
 14 **So if the board were to meet outside in the hallway**
 15 **with no one around, that would be an illegal meeting.**
 16 Q. Have you completed your answer?
 17 **A. Yes.**
 18 Q. Did you ever request advice from anyone on
 19 that topic?
 20 **A. No, not that I can remember.**
 21 Q. Do you recall any discussion of that opinion,
 22 that is, that to meet immediately, immediately prior to
 23 walking on stage and taking your seats at the board
 24 meeting, to meet solely for the purpose of having a

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1 **half, no.**
 2 Q. Did you have a piece of paper that you
 3 brought, the piece of paper on which the disclaimer was
 4 written, that you took with you to each meeting --
 5 **A. Yes.**
 6 Q. -- so that you'd know what to read?
 7 **A. Yes.**
 8 Q. Do you still have that piece of paper?
 9 **A. No.**
 10 Q. Did you give it to Mr. Bireley?
 11 **A. I more than likely did.**
 12 Q. Okay.
 13 Mr. Bireley testified that that
 14 disclaimer consists of Paragraphs 1 and 4 of the board
 15 policy. Is that your recollection?
 16 **A. I never really put the two together, but now**
 17 **that I read them, I would say that's probably it.**
 18 Q. Am I right in understanding, Mr. Walls, that
 19 it is the intention of the board prayer policy that no
 20 one other than the adult members of the board would be
 21 the object of the prayer?
 22 **A. That is the object.**
 23 Q. Am I then correct that in order to solemnify
 24 its proceedings, the prayer among the adult members of

1 prayer among only the adult members of the board would
 2 violate the Sunshine Laws?
 3 **A. There could have been discussion. I can't**
 4 **recall.**
 5 Q. Did you ever express the view that to meet
 6 solely for the purpose of a prayer immediately prior to
 7 a regular board meeting would violate the Sunshine
 8 Laws?
 9 **A. I could have.**
 10 Q. Well, with respect, Mr. Walls, "I could have"
 11 is not a useful answer because you could have done
 12 anything.
 13 **A. Well, I'm of that opinion since you asked me**
 14 **that why don't we meet before going in, I'm of the**
 15 **opinion now that that would be an illegal meeting. I**
 16 **can't see where I would have been under a different**
 17 **opinion a year and a half ago or two years ago.**
 18 MR. ALLINGHAM: We're going to change the
 19 tape.
 20 VIDEO SPECIALIST: Going off the record
 21 at 2:31 p.m.
 22 (Recess.)
 23 VIDEO SPECIALIST: Going back on the
 24 record at 2:37 p.m.

12 (Pages 42 to 45)

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1 BY MR. ALLINGHAM:	1 a prayer among the ten board members immediately prior
2 Q. Before we broke, Mr. Walls, I asked you some	2 to the regular board meeting effectively operate to
3 questions about whether the board could effectively	3 solemnify the proceedings?
4 solemnify its proceedings by meeting immediately prior	4 A. I suppose it could.
5 to the regular board meeting and having its prayer	5 Q. Would you agree with me that the only
6 among the adult board members then.	6 difference between a prayer -- for purposes of just
7 A. Uh-huh.	7 articulating the difference here, I'm going to assume
8 Q. And I think your testimony was, "I don't think	8 that you're meeting in one of the district school's
9 that would solemnify the proceedings because it would	9 auditoriums. All right?
10 be illegal," is that a fair summary of what you said?	10 A. Uh-huh.
11 A. It may be what I said. I don't know that	11 Q. The only difference between meeting in the
12 that's a reason because.	12 wings off stage and having a prayer and sitting down at
13 Q. That was what I wanted to explore. There's	13 your table on stage and having a prayer is that there's
14 two separate issues here, one is whether it would be	14 an audience for the latter and not for the former,
15 legal to do so.	15 isn't that right?
16 A. Uh-huh.	16 A. There could be an audience.
17 Q. And one is setting aside the issues of	17 Q. Have you ever been to a board meeting where
18 legality under the Sunshine Laws, would that be an	18 there wasn't an audience?
19 equally effective way to solemnify the proceedings	19 A. I have been to some pretty sparsely attended
20 among the adult board members who are the target of the	20 ones.
21 prayer. Okay?	21 Q. But there's always an audience, isn't there?
22 A. Okay.	22 A. It depends on what you mean by audience.
23 Q. Do you agree with me that there are two	23 Q. Have you ever been to a board meeting at which
24 separate concepts?	24 there was no one present except the ten adult members
<hr/>	
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1 A. I understand what you're saying, yes.	1 of the board?
2 Q. And I want to come back to the legality part	2 A. No.
3 in a minute. But first, would you agree with me that	3 Q. Okay.
4 it would be equally effective to solemnify the board's	4 A. Not a regular scheduled.
5 proceedings if the board members met immediately prior	5 Q. Yes, and we're talking about regular board
6 to the board meeting and had a prayer among themselves?	6 meetings --
7 A. I don't think it would be equally.	7 A. Yes.
8 Q. How would it be different in terms of the	8 Q. -- because that's what the board prayer policy
9 effect of solemnifying the board's proceedings?	9 applies to; correct?
10 A. To me it sets the whole atmosphere of the	10 A. Right.
11 board meeting.	11 Q. All right. One difference between standing in
12 Q. Do you have a button under the table?	12 the wings and having a prayer among the adult board
13 A. I'm not a fire member either.	13 members and walking on stage and having a prayer once
14 Q. It sets the whole tone of the board meeting?	14 you sit down at the table is that there's an audience
15 A. Uh-huh.	15 for the on stage prayer; correct?
16 Q. For the ten board members who would have the	16 A. That's one difference.
17 prayer immediately prior to walking into the room,	17 Q. Okay. With respect to the solemnification of
18 wouldn't it set the tone for them equally well?	18 the proceedings, can you think of any other difference
19 A. I don't think it would be equal.	19 between the off stage prayer and the on stage prayer?
20 Q. Would you agree with me that it would	20 A. I don't know the differences. You have
21 effectively solemnify the proceedings?	21 mentioned one.
22 A. It could.	22 Q. Is there any other difference that you can
23 Q. Well, it could is not -- anything could	23 think of, in terms of the impact on solemnifying the
24 happen. My question to you is what is your view, would	24 proceedings, between a prayer off stage and a prayer on

13 (Pages 46 to 49)

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1 stage?

2 **A. Not that I can think of.**

3 Q. Okay. Now let's talk about the difference in
4 the impact on the solemnification of the board's
5 proceedings because there's an audience for the on
6 stage prayer. Okay?

7 Is that because, in your judgment, is
8 that because the members of the audience also get the
9 benefit of setting the tone for the meeting in the on
10 stage prayer?

11 **A. I would say they would get the benefit.**

12 Q. And they get the benefit because they observe
13 and participate in the prayer; is that correct?

14 **A. No.**

15 Q. So they're not participating in the prayer?

16 **A. No.**

17 Q. Then how does it have an impact on them in
18 terms of setting the tone for the meeting?

19 **A. I would think anybody who asks for guidance
20 doesn't do it just asking for himself or herself.**

21 **Normally people, when a prayer is given, are respectful
22 even though they're not asked to participate.**

23 Q. When prayers are offered at board meetings, do
24 you participate?

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1 Q. Would it be your expectation that members of
2 the audience would close their eyes and bow their heads
3 during the offering of the prayer?

4 **A. I have no expectation for the audience. They
5 can do whatever they wish.**

6 Q. In your view, Mr. Walls, is it necessary for a
7 member of the board to open board meetings with a
8 prayer in order to solemnify the proceedings?

9 **A. Is it necessary?**

10 Q. Yes.

11 **A. No.**

12 Q. To state it from the other direction, the
13 board would -- it's your expectation that the board
14 would conduct its proceedings in a solemn and dignified
15 and disciplined way whether it opened the meeting with
16 a prayer or not, isn't that correct?

17 **A. Yes.**

18 Q. In special meetings of the board, it has been
19 the practice not to open those meetings with a prayer;
20 correct?

21 **A. Correct.**

22 Q. Those meetings have been conducted, I take it,
23 in a solemn, respectful and disciplined way?

24 **A. Hopefully.**

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1 **A. I have.**

2 Q. Were there board meetings where you didn't
3 participate?

4 **A. Where I didn't participate in the prayer?**

5 Q. Did not participate in the prayer?

6 **A. No.**

7 Q. What do you do to indicate -- when you're not
8 leading the prayer, what do you do to indicate that
9 you're participating?

10 **A. I don't know that I have to indicate anything.**

11 Q. I didn't say that you had to. Do you do
12 anything to indicate that you're participating in the
13 prayer?

14 **A. Occasionally I may say "amen" at the end.**

15 Q. Do you bow your head?

16 **A. Yes.**

17 Q. Do you fold your hands in prayer?

18 **A. I don't fold my hands, no.**

19 Q. Do you close your eyes when the prayer is
20 offered?

21 **A. Yes.**

22 Q. Is that your consistent practice to close your
23 eyes and bow your head?

24 **A. Yes.**

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1 Q. Yes, sir.

2 For the members of the board -- let me
3 just speak specifically for you first. Are you a
4 member of any particular religion?

5 **A. Yes.**

6 Q. What religion is that?

7 **A. Methodist.**

8 Q. And do you regularly attend church?

9 **A. Not regularly.**

10 Q. Are you a member of some church?

11 **A. Yes.**

12 Q. What church is that?

13 **A. Grace United Methodist in Georgetown.**

14 Q. You mentioned one aspect of the
15 solemnification of the proceedings might be to seek
16 divine guidance for decisions that board members would
17 be confronted with during the meeting, do you recall
18 that?

19 **A. Yes.**

20 Q. And do you, yourself, or did you yourself when
21 you were a board member, from time to time, seek divine
22 guidance for the decisions with which you'd be faced?

23 **A. Yes.**

24 Q. Did you do that during special meetings from

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1 time to time?

2 **A. Personally?**

3 Q. Yes.

4 **A. Yes.**

5 Q. And I take it you did that by offering a

6 silent prayer for guidance?

7 **A. Yes.**

8 Q. Whether God hears your request for divine

9 guidance doesn't depend whether it's stated out loud or

10 said to yourself, according to your belief?

11 **A. That's true.**

12 Q. Would you agree with me, then, that it would

13 be equally effective to solemnify the proceedings for

14 each individual board member to ask for divine guidance

15 in his or her own way in accord with the freedom of

16 conscience of that individual adult board member?

17 **A. It could be.**

18 Q. Would you think that it would be?

19 **A. No.**

20 Q. And would you explain to me why not?

21 **A. Just simply because of tradition if nothing**

22 **else.**

23 Q. I am going to show you again -- actually, you

24 may still have it.

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1 **that.**

2 Q. But you don't --

3 **A. To my knowledge, for at least 14 years, I know**

4 **they have.**

5 Q. My question is simply directed to whether you

6 recall having told Mr. Neuberger that?

7 **A. My recollection's not good enough to recall**

8 **what I told somebody a year and a half ago or two years**

9 **ago or whatever it was.**

10 Q. That's a perfectly good answer. I'm just

11 trying to get at whether you do recall that you said

12 it, you affirmatively recall that you didn't say it, or

13 whether you just don't remember one way or another?

14 **A. No, I don't remember specifically --**

15 Q. Fair enough.

16 **A. -- that I told Tom Neuberger.**

17 Q. Fair enough.

18 As between the two methods of

19 solemnifying the proceedings which are set forth in the

20 policy, that is, a prayer or a moment of silence, do

21 you view them as equally effective in solemnifying the

22 proceedings.

23 **A. My personal view is yes.**

24 Q. Have you ever heard any discussion at a board

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1 MR. SHAU: PX-36.

2 MR. ALLINGHAM: The press release, yes,

3 PX-36.

4 BY MR. ALLINGHAM:

5 Q. The second paragraph of the text of the press

6 release reads, "The Indian River School Board has

7 historically opened its meetings with a non-sectarian

8 prayer. Our own US Congress and many other public

9 bodies historically do so."

10 **A. Right.**

11 Q. Is it correct that the Indian River -- first

12 of all, do you know where Mr. Neuberger learned that

13 the Indian River School Board has historically opened

14 its meetings with a non-sectarian prayer?

15 **A. I don't know how Mr. Neuberger knew that.**

16 Q. Did you tell him that?

17 **A. I could have.**

18 Q. Is it your view that the Indian River School

19 Board has historically opened its meetings with a

20 non-sectarian prayer?

21 **A. Yes.**

22 Q. But as you sit here today, you don't recall

23 one way or another whether you told Tom Neuberger that?

24 **A. I could very well have told Tom Neuberger**

1 meeting in which a board member expressed the view that

2 a moment of silence was not as effective as a prayer to

3 solemnify the proceedings?

4 **A. I don't remember such discussion.**

5 Q. Do you remember any discussion at the board

6 level of the possibility of having a policy that would

7 simply provide for a moment of silence rather than a

8 prayer?

9 **A. I believe there was one board member who**

10 **expressed that possibility.**

11 Q. Who was that?

12 **A. I believe that was Dr. Isaacs.**

13 Q. Did he express that possibility at a board

14 meeting?

15 **A. I think he did.**

16 Q. Do you know when that board meeting took

17 place?

18 **A. Oh, I would have no idea.**

19 Q. This would be before the policy was adopted;

20 correct?

21 **A. Yes.**

22 Q. What was the response, if any, from other

23 board members?

24 **A. The biggest response I heard was, no.**

15 (Pages 54 to 57)

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1 Q. And did anyone express their reasons for 2 saying no?	1 to give a prayer, so they wouldn't put anybody on the 2 spot. And usually that would turn out to be one or two 3 people throughout that year historically.
3 A. Tradition. I think I heard that more than 4 anything else.	4 After that I think more people were 5 asked to give a prayer, if they would like to. But I 6 know even when I was board president, I didn't want to 7 ask somebody at the board meeting right then and there 8 and put them on the spot.
5 Q. Tradition meaning the board's history of 6 opening its meetings with a prayer?	9 Q. How would that put a board member on the spot?
7 A. Yes.	10 A. Well, I certainly wouldn't -- I'm not the type 11 of person that I give public prayers often. I don't 12 have that opportunity often.
8 Q. Of course the policy, I take it, breaks from 9 that tradition in the sense that it permits a moment of 10 silence as well?	13 If I were going to do one at a board 14 meeting, I'd want to know it in advance.
11 A. It breaks from that tradition, yes.	15 Q. Well, couldn't a board member simply decline 16 the opportunity?
12 Q. Did anyone express any views, any reasons for 13 saying no to Dr. Isaacs's suggestion other than 14 tradition?	17 A. Oh, certainly, certainly.
15 A. I can't remember.	18 Q. So why would it be putting the board member on 19 the spot?
16 Q. Do you recall anyone saying, I am not going to 17 be told how I pray?	20 A. I just believe that it would.
18 A. I have heard board members say that, yes.	21 Q. Well, and I'm trying to explore why you 22 believe it would?
19 Q. Was that at a board meeting?	23 A. Well, if you were to ask somebody and they 24 would publicly decline, they may very well be
20 A. Yes.	
21 Q. More than one board meeting?	
22 A. We had more than one discussion over it, I'm 23 sure.	
24 Q. What board members do you recall having said	
Page 59	Page 61
1 that?	1 embarrassed.
2 A. I have said that.	2 Q. Why would they be embarrassed by publicly 3 declining an opportunity to open the meeting with a 4 prayer?
3 Q. Anybody else?	5 A. Again, they would be put on the spot and asked 6 about something they didn't know about ahead of time.
4 A. I'm sure there is, but exactly who, I couldn't 5 tell you.	7 Q. Was it your perception there was something 8 wrong with simply declining the opportunity?
6 Q. Did this board policy change the board's 7 practice in any way of opening its meetings with a 8 prayer? Did it effect any change in the board's 9 practice or did it simply memorialize what had gone on 10 before?	9 A. It may be someone else's perception.
11 A. I think there was more participation or in a 12 rotation basis.	10 Q. The perception of someone else in the 11 audience?
13 Q. By that you mean that after the adoption of 14 the policy more board members participated in the --	12 A. Yes.
15 A. Yes.	13 Q. And so by offering people the opportunity in 14 advance, you would avoid --
16 Q. -- in the opportunity to open the meetings 17 with a prayer?	15 A. Well, some people, I know, wouldn't have time 16 to research one board member in particular like 17 historical-type prayers.
18 A. Correct.	18 Q. Dr. Hattier?
19 Q. Was that something that was, that you intended 20 as the person who recommended this policy to occur as a 21 result of the adoption of the policy?	19 A. Yes, sir.
22 A. I think it was just a matter of fairness, 23 because before that it had basically been up to the 24 president, would ask someone, you know, ahead of time	20 Q. Other than that, did the policy effect any 21 change in the practice of the board regarding opening 22 its meetings with a prayer?
	23 A. I don't think so.
	24 Q. The policy provides in paragraph -- this

16 (Pages 58 to 61)

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1 rotational idea is set forth in Paragraph 2 of the
2 policy; correct?
3 **A. Right.**
4 Q. And since the adoption of the policy and up to
5 the point where you left the board, was the mechanism
6 or procedure set forth in Paragraph 2 followed?
7 **A. I don't think it was followed to the letter,**
8 **no.**
9 Q. Tell me what you did as board president to
10 rotate the opportunity to offer a prayer or moment of
11 silence among the board members?
12 **A. Well, honestly, honestly, if -- again, if I**
13 **didn't ask someone ahead of time, I felt very bad about**
14 **asking somebody at all.**
15 Q. Okay.
16 **A. And many times I had forgotten about it when I**
17 **got to the board meeting.**
18 Q. Yes.
19 **A. So at which time I knew there was only one or**
20 **two board members who had no problem feeling**
21 **comfortable doing it.**
22 Q. Right.
23 **A. So they probably got asked more than other**
24 **people.**

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1 prayer; correct?
2 **A. No, because I think we have one who**
3 **specifically did a moment of silence.**
4 Q. Yes, I'm sorry, my question wasn't clear.
5 The practice that you and Mr. Bireley
6 followed ensured that no one would decline the
7 opportunity to offer a prayer or a moment of silence;
8 correct?
9 **A. In our personal practices, yeah, it probably**
10 **assured that.**
11 Q. Yes.
12 Would you agree with me that the
13 rotational mechanism set forth in Paragraph 2 -- well,
14 let me back up.
15 If a member chooses not to exercise the
16 opportunity, the next member in the rotation is offered
17 the opportunity, would you agree with me that the net
18 effect of that mechanism is that unless all ten adult
19 board members decline the opportunity, that is, unless
20 all ten don't want to open the meeting with a prayer or
21 moment of silence, the board's meetings will be open
22 with a prayer or a moment of silence?
23 **A. That's probably correct.**
24 Q. Did you give any consideration to just not

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1 Q. Okay. Did you -- well, let me ask you a
2 question.
3 Am I correct, then, that your practice
4 as board president did not change from before adoption
5 of the policy to after the adoption of the policy in
6 terms of how you offered the opportunity to prayer?
7 **A. There was no set practice as far as I know as**
8 **far as alphabetical or anything like that on how you**
9 **would rotate.**
10 Q. When I took Mr. Bireley's deposition, who
11 succeeded you as board president --
12 **A. Uh-huh.**
13 Q. -- he told me that what he did was to ask the
14 board members who were then sitting on the board
15 whether they would like to be included in the rotation.
16 **A. Uh-huh.**
17 Q. And he then offered the opportunity to prayer
18 at the board meetings only to the people who had
19 responded affirmatively that they'd like to be in the
20 rotation.
21 Is that effectively what you did?
22 **A. Yes.**
23 Q. That practice ensures that no one will ever
24 decline the opportunity to open the meeting with a

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1 adopting a policy since it was not going to change the
2 board's practice and tradition of opening its meetings
3 with a prayer?
4 **A. I don't know if I did or not.**
5 Q. How did Mr. Neuberger know what you wanted in
6 terms of the substance of the board prayer policy that
7 you asked him, or someone asked him on your behalf to
8 draft?
9 **A. I don't know how he knew it.**
10 Q. Did you give Mr. Neuberger any instructions at
11 all as to what you wanted the board prayer policy to
12 say?
13 **A. Did I?**
14 Q. Yes.
15 **A. No.**
16 Q. Did you ask someone else to give Mr. Neuberger
17 instructions on what the board policy should say?
18 **A. Not that I can remember.**
19 Q. Does it strike you as odd that you sent
20 someone off to draft a policy without giving him any
21 instructions at all about the content of the policy
22 that you wanted?
23 **A. To me, on something like this, I think we were**
24 **after trying to get something that was legal.**

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1 Q. Okay. Would I be right in understanding that
2 at the very least you said, in words or substance, what
3 we're looking for, Mr. Neuberger, is a board prayer
4 policy that's legal?

5 A. **We certainly wanted something that was legal.**

6 Q. And I assume you told Mr. Neuberger that or
7 somehow conveyed that to Mr. Neuberger?

8 A. **It may have been conveyed to him, I'm sure.**

9 Q. There are lots of board prayer policies that
10 would be legal? For example, you could have a board
11 prayer policy that says, or a policy on solemnization
12 that says, In order to solemnify its proceedings, the
13 board of education may choose to open its meetings with
14 a moment of silence.

15 Do you know how Mr. Neuberger knew that
16 you wanted a policy that contemplated a prayer or a
17 moment of silence?

18 A. **Not that specifically, no.**

19 Q. Okay.

20 The board's practice up to 2004 had been
21 to open its meetings with a prayer, not with a moment
22 of silence; correct?

23 A. **Yes.**

24 Q. Do you know why Mr. Neuberger put a moment of

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1 A. **No. Or not that I can remember.**

2 Q. I am sorry, sir, I didn't write it down, the
3 name of the church that you're a member of is the Grace
4 United Church?

5 A. **Grace United --**

6 Q. United Methodist?

7 A. **-- United Methodist Church.**

8 Q. There's been testimony in the depositions in
9 this case that have been taken in the last couple of
10 weeks that at the August 24th, 2004 board meeting there
11 were many hundreds of people in attendance. Do you
12 recall that board meeting?

13 A. **Yes.**

14 Q. Do you know whether any effort was made at
15 Grace United Methodist Church to encourage members of
16 the congregation to attend that board meeting?

17 A. **I don't know that.**

18 Q. Have you ever heard anything about that?

19 A. **What, that Grace Church asked people to come?**

20 Q. Or encouraged people to come.

21 A. **No, I haven't.**

22 Q. Have you heard of any church at which
23 parishioners were encouraged to attend the August 24th
24 board meeting?

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1 silence in the draft?

2 A. **No, I don't know why.**

3 Q. Do you know why Mr. Neuberger put the rotation
4 in Paragraph 2 of the draft?

5 A. **Only that that would give everybody the
6 opportunity to give a prayer.**

7 Q. Did you ever have any discussions with
8 Mr. Neuberger about this draft?

9 A. **I probably did.**

10 Q. Do you recall the substance of those
11 discussions?

12 A. **No, I don't.**

13 Q. At the time this policy was adopted, the only
14 members of the board were adults; is that correct?

15 A. **Yes.**

16 Q. And there has never been a non-adult member of
17 the board; correct?

18 A. **Not to my knowledge.**

19 Q. Do you know why Mr. Neuberger put in Paragraph
20 4, "it is among only the adult members of the board"?

21 A. **Well, it could be because some school boards
22 do have student members of the board.**

23 Q. Did you have a discussion with Mr. Neuberger
24 about that?

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1 A. **No.**

2 Q. When you arrived at the board meeting, did you
3 notice that there were buses parked in the parking lot?

4 A. **I got there early, and we came in through the
5 back. It was quite crowded.**

6 Q. Quite crowded even when you arrived early?

7 A. **Yes.**

8 Q. You said you came in through the back. Does
9 that mean that you don't go through the main parking
10 lot at Frankford Elementary?

11 A. **We didn't that night.**

12 Q. So you didn't see buses in the parking lot?

13 A. **No.**

14 Q. Did you personally encourage anyone to attend
15 the August 24th board meeting?

16 A. **Yes. My wife.**

17 Q. Anyone else?

18 A. **No.**

19 Q. Why did you encourage your wife to attend?

20 A. **Because I occasionally encourage her to come.**

21 Q. I have been on a school board and it's hard
22 for me to imagine encouraging my wife --

23 A. **I also encouraged her to come to my last one.**

24 Q. The last one I could see because you were

18 (Pages 66 to 69)

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1 leaving the board; right? Was there a particular
2 reason why you --
3 **A. She came over the years, over the 14 years or**
4 **so, she came in support of me.**
5 Q. In support of you for a particular issue?
6 **A. No.**
7 Q. Just --
8 **A. Just being in support of me as her husband.**
9 Q. Was there anything that distinguished the
10 meetings at which she came to support you as her
11 husband from the meetings where she didn't attend?
12 Were they particularly thorny issues that were going to
13 be presented at those meetings?
14 **A. I couldn't tell you. There could have been.**
15 Q. You said that you encouraged your wife to
16 attend the August 24th meeting. Was there a particular
17 reason why you encouraged her to attend that meeting?
18 **A. I knew that that would be a well attended**
19 **meeting.**
20 Q. But apart from your wife, you didn't encourage
21 anyone else?
22 **A. I don't see anything wrong with encouraging my**
23 **wife to do anything I'm doing.**
24 Q. I didn't suggest that there was.

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1 **A. I think the purpose of the board prayer policy**
2 **was to put something in place that had no coverage at**
3 **all in the policy manual.**
4 Q. Well, there are many things that aren't
5 covered in the policy manual, isn't that right?
6 **A. There is, there is.**
7 Q. So what I'm trying to get at is the purpose
8 for adopting this particular policy?
9 **A. Well, the accusation had been made that prayer**
10 **before a board policy -- or board meeting was illegal.**
11 **And I think that our asking an attorney to come up with**
12 **a policy that was legal was totally in line.**
13 Q. And was the purpose of doing that to protect
14 the individual board member's right to pray as they see
15 fit?
16 **A. That was one of the purposes.**
17 Q. When you presented Board Policy BDA.1 to the
18 full board, did you tell the board that the board's
19 attorneys had approved it?
20 **A. I don't remember what I told the board when I**
21 **presented it.**
22 Q. Did the board's attorneys review and approve
23 the policy before it was presented to the full board?
24 MR. SHAU: Objection.

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1 **A. But other than my wife?**
2 Q. Yes, sir.
3 **A. No.**
4 **Actually as board president I like it a**
5 **lot better when there's a lot less people there.**
6 Q. Why is that?
7 **A. The meeting tends to go a little easier.**
8 Q. If there's heavy attendance, you have more
9 difficulty in running the meeting?
10 **A. As board president, yes.**
11 Q. Why is that?
12 **A. More people, more people want to talk, tends**
13 **to take things a long time.**
14 Q. We will talk about that in a minute. We will
15 talk about that in a minute.
16 You testified a little earlier that you,
17 and perhaps other board members, had expressed the view
18 with respect to the school board prayer policy that no
19 one should, no one should tell you how to pray. Do you
20 recall that?
21 **A. I remember saying that.**
22 Q. Was a purpose of adopting the board prayer
23 policy to safeguard or otherwise protect the individual
24 board members' right to pray as they see fit?

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1 THE WITNESS: I don't know.
2 MR. SHAU: You can answer as to whether
3 or not the attorneys reviewed it. I'm going to
4 instruct the witness not answer as to whether or not
5 they approved the policy BDA.1.
6 BY MR. ALLINGHAM:
7 Q. Let me break it into two questions.
8 **A. I don't know if they reviewed it or not.**
9 Q. Was it your practice as chairman of the policy
10 committee to have the board's attorneys review policies
11 before they were proposed for adoption?
12 **A. Not all policies.**
13 Q. How did you decide which policies to have the
14 board attorneys review?
15 **A. A lot of times I left that decision to the**
16 **administrators.**
17 Q. The administrators being the superintendent
18 and the assistant superintendent?
19 **A. Well, the superintendent wasn't on the policy**
20 **committee, but the assistant superintendent was.**
21 Q. I have reviewed the minutes and audiotapes of
22 the meetings since October 19th, 2004, and it appears
23 to me that you did not offer a prayer during the period
24 from October 2004 until you left the board; is that

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1 correct?

2 **A. Me personally?**

3 Q. Yes.

4 **A. No, I think I did.**

5 Q. You're absolutely right. And you offered a
6 prayer that was taken from a speech or a sermon by
7 Martin Luther King?

8 **A. That's correct.**

9 Q. How did you find that?

10 **A. I don't know. It was a historical prayer. I
11 can't remember just exactly the context of it.**

12 Q. Why did you choose a prayer by Martin Luther
13 King?

14 **A. No reason.**

15 Q. There can't be no reason.

16 **A. I don't remember.**

17 Q. Do you recall if you said at the meeting
18 before you gave the prayer that it was a prayer from
19 Martin Luther King?

20 **A. I don't recall. I could have.**

21 Q. Did you get the prayer from Dr. Hattier?

22 **A. I don't know where I got the prayer from.**

23 Q. Did you know before the August 24th board
24 meeting that it was going to be well attended?

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1 **A. I had that feeling.**

2 Q. How did you get that feeling?

3 **A. Well, this is Sussex County. When things get
4 stirred up pretty much --**

5 Q. You hear about it?

6 **A. You hear it.**

7 Q. Would you agree that news can travel just as
8 effectively by word of mouth in Sussex County as by
9 other media?

10 **A. I would agree to that.**

11 Q. When you arrived -- before the meeting, did
12 you know that there would be overflow, an overflow room
13 set up with a video feed?

14 **A. I probably did know that.**

15 Q. Did Mrs. --

16 **A. I think Mrs. Hobbs may have briefed me that
17 afternoon.**

18 Q. Was it your practice to meet with the
19 superintendent in the afternoon before a board meeting?

20 **A. No.**

21 Q. When you walked into the board meeting at
22 Frankford Elementary on August 24th, what do you recall
23 about the atmosphere?

24 **A. Kind of tense. But it seemed to be, you know,**

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1 disrespectful and discourteous?

2 **A. I didn't find any to be out of line that I can
3 remember. There were 30 some people I think that
4 talked.**

5 Q. In order to -- the process for asking to speak
6 at the public comment session of your board meetings is
7 that there's a sign-up sheet; correct?

8 **A. Yes.**

9 Q. And in advance of the -- I'm sorry, the
10 August 24th board meeting, you saw that there were a
11 lot of people who had signed up to speak; correct?

12 **A. Yes.**

13 Q. And in response, did you expand the length --

14 **A. Yes.**

15 Q. -- of the public comment session?

16 **A. Yes.**

17 Q. And in response did you reduce the length of
18 time that each individual speaker could speak?

19 **A. Yes, I think I did.**

20 Q. And did you enforce those time limitations?

21 **A. I think I only had to bang the gavel on one
22 person to cut them off who I think went past the time
23 limit.**

24 Q. Who was that?

20 (Pages 74 to 77)

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1 **A. Harold Johnson.**
 2 Q. That's the only one you recall having to bang
 3 the gavel?
 4 **A. That's the only one I recall having to bang**
 5 **the gavel on to tell him that was enough.**
 6 Q. Who kept the time?
 7 **A. Mr. Savage.**
 8 Q. The way it would work was Mr. Savage would
 9 keep the time and let you know when the time --
 10 **A. Yes, he would say time when the two minutes**
 11 **were up.**
 12 Q. I forgot to ask you, Mr. Walls. Did you ask
 13 Mr. Neuberger whether the policy, the board prayer
 14 policy that he drafted, that he gave you, had been used
 15 elsewhere?
 16 **A. I don't know if I asked that or not.**
 17 Q. Did you ever learn whether it had been used
 18 elsewhere?
 19 **A. No. I still don't know if it has or it**
 20 **hasn't.**
 21 Q. Another policy that you adopted in the same
 22 time frame, the policy on religion --
 23 **A. Right.**
 24 Q. -- was largely taken from the Capital School

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1 Q. All right. If you were interested, did you do
 2 anything to investigate that issue?
 3 **A. I may have asked an administrator to look into**
 4 **that, but I don't remember anything ever coming back.**
 5 Q. As you sit here today, do you know whether any
 6 other district has --
 7 **A. No, I don't.**
 8 Q. You have to let me finish.
 9 **A. Oh, I'm sorry.**
 10 Q. On the one hand, we'd go faster if we each
 11 infringed on the other. On the other hand, we'd have a
 12 bad transcript.
 13 **A. All right.**
 14 Q. But I did lose my train of thought.
 15 Have you ever learned whether any other
 16 district in the State of Delaware has a school board
 17 prayer policy?
 18 **A. No, I haven't.**
 19 Q. Do you know whether any other school district
 20 opens its board meetings with a prayer?
 21 **A. No, I don't.**
 22 Q. Are you interested in those questions?
 23 **A. Yeah, I'm interested.**
 24 Q. I'm going to show you a portion -- did you

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1 District. Do you recall that?
 2 **A. I don't know that it was Capital.**
 3 Q. Did you from time to time use policies from
 4 other districts --
 5 **A. Yes.**
 6 Q. -- as precedents?
 7 **A. Yes.**
 8 Q. Is there a reason why you didn't use a
 9 precedent from another district to draft this school
 10 board prayer policy?
 11 **A. I don't know if there's another board policy,**
 12 **prayer policy out there in Delaware on another**
 13 **district.**
 14 Q. Did you look into whether there was another
 15 board prayer policy?
 16 **A. Did I, no.**
 17 Q. Did you ask anyone to look into that?
 18 **A. I don't think so.**
 19 Q. As a member of the policy committee, were you
 20 interested in whether any other district in the state
 21 had seen fit to adopt a policy on school board prayer?
 22 **A. Was I interested?**
 23 Q. Yes.
 24 **A. I'm still interested.**

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1 know that the August 24th meeting was videotaped?
 2 **A. No, I didn't know that.**
 3 Q. Have you ever seen or viewed any portion of
 4 the videotape of that meeting?
 5 **A. I saw something on the WBOC News, like a**
 6 **ten-second clip or something the next day, but that's**
 7 **all.**
 8 Q. Apart from that, that's all you know?
 9 **A. That's all I know.**
 10 Q. I want to show you a portion of the video --
 11 so there's the siren, then there's the audio from the
 12 videotape. Its conspiracy to shut me up.
 13 I am going to show you a portion of the
 14 videotape of the meeting. This is the comments of
 15 Harold Johnson.
 16 And I think you will hear your voice
 17 toward the end of the portion of this tape.
 18 And I am going to ask you some questions
 19 about it after I play it. If you need to see it again
 20 in order to get the substance of the comments, just let
 21 me know.
 22 For the record, this is from PX-40, and
 23 what's the time?
 24 MR. KEARNS: One hour one minute and zero

21 (Pages 78 to 81)

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1 seconds to one hour four minutes and 19 seconds.
 2 MR. ALLINGHAM: Don't worry, I have
 3 absolute faith in my crew here.
 4 Do you want me to go to something else
 5 and come back?
 6 MR. KEARNS: That's okay.
 7 (At this time Exhibit PX-40, a video
 8 recording, was played for the witness.)
 9 BY MR. ALLINGHAM:
 10 Q. First of all, I take it from some earlier
 11 testimony that you gave that you do recall Mr. Johnson
 12 spoke at the public comment session of the meeting?
 13 A. Yes.
 14 Q. And do you recall that Mr. Johnson spoke after
 15 Mrs. Dobrich spoke?
 16 A. Oh, I couldn't tell you when he spoke.
 17 Q. I'll represent to you that he did.
 18 A. Okay.
 19 Q. Did you hear Mr. Johnson speak about the
 20 disappearance of Madalyn Murray O'Hair at the meeting?
 21 A. I heard that.
 22 Q. And you heard it today?
 23 A. Yes.
 24 Q. Did you hear it at the meeting as well?

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1 had.
 2 Q. Okay. To come back to my original question.
 3 Do you think it would have been reasonable for
 4 Mrs. Dobrich to view that as a threat after she had
 5 spoken out in favor of changing the board's policy on
 6 prayer?
 7 A. Again, knowing Mr. Johnson, no, I just can't
 8 imagine him threatening.
 9 Q. I didn't ask whether he threatened her. I
 10 asked whether you thought it would be reasonable for
 11 Mrs. Dobrich to understand what he said to be a threat?
 12 A. Again, I wouldn't take what Mr. Johnson said
 13 as a threat because I know the guy.
 14 Q. Do you know whether Mrs. Dobrich knows the
 15 guy?
 16 A. I have no clue.
 17 Q. Did you notice the laughter from the crowd
 18 when he started talking about Mrs. O'Hair's
 19 disappearance?
 20 A. No, I didn't. Trying to run that meeting and
 21 get through that many speakers, believe me, I wanted
 22 everybody to get done as quickly as possible.
 23 Q. I can understand that. I meant during the
 24 tape, did you hear the laughter when he, Mr. Johnson --

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1 A. I think I -- yes, I had heard it.
 2 Q. And at the time did you know who Madalyn
 3 Murray O'Hair was?
 4 A. No, I didn't. It didn't sink into me who she
 5 was.
 6 Q. Well, Mr. Johnson helpfully described for
 7 those in the audience who Madalyn Murray O'Hair was;
 8 correct?
 9 A. Right.
 10 Q. And my question to you, Mr. Walls, is, do you
 11 think that it would have been reasonable for
 12 Mrs. Dobrich to feel threatened by the comments that
 13 Mr. Johnson made about the disappearance of a person
 14 who initiated the movement to remove prayer from the
 15 schools?
 16 A. I have known Mr. Johnson a long time. He was
 17 on the board when I first got on the board, and I can't
 18 believe that Mr. Johnson would make, you know, a
 19 personal threat of somebody's health.
 20 Q. Can you think of any reason why Mr. Johnson
 21 would have included in his remarks a description of
 22 Mrs. O'Hair's disappearance after she initiated the
 23 movement to remove prayer from our schools?
 24 A. I don't know why he put whatever context he

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1 A. Yes, I heard it.
 2 Q. And did you find that disturbing as you
 3 watched it, that people would be laughing at a
 4 description of somebody disappearing?
 5 A. Yes. But I don't believe you saw me laughing
 6 on there.
 7 Q. I don't think I did.
 8 Was it your voice at the beginning of
 9 the segment that I played for you that said something
 10 along the lines of, "Sorry, Harold, I was going to say
 11 Earl"?
 12 A. It could have been. And I don't know why I
 13 would have said that.
 14 Q. Do you recall that the August 24th meeting was
 15 opened with a prayer?
 16 A. Yes.
 17 Q. You invited Dr. Hattier to give that prayer --
 18 A. That's correct.
 19 Q. -- correct?
 20 A. Correct.
 21 Q. Did you know what prayer he was going to give?
 22 A. I did.
 23 Q. How did you find out what prayer he was going
 24 to give?

22 (Pages 82 to 85)

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1 **A. He told me ahead of time when I asked him to**
 2 **give the prayer. He told me it would be one by George**
 3 **Washington.**
 4 Q. Do you know whether Dr. Hattier told anyone
 5 else what prayer he was going to give?
 6 **A. I don't know that.**
 7 Q. Did you tell anyone else what prayer
 8 Dr. Hattier was going to give?
 9 **A. I don't know if I did or not.**
 10 Q. Do you recall that state representatives spoke
 11 at the meeting?
 12 **A. Yes, there were three.**
 13 Q. Do you recall that they read a letter?
 14 **A. Yes.**
 15 Q. Do you recall that the letter indicated
 16 knowledge of the prayer that Dr. Hattier was going to
 17 give?
 18 **A. I don't recall that.**
 19 Q. Have you ever served as a member of any other
 20 public body than the Indian River School Board?
 21 **A. Yes.**
 22 Q. What bodies?
 23 **A. The Georgetown Jaycees, Sussex Central Pop**
 24 **Warner Football. I was president of that for two**

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1 attention that the school board prayer issue got?
 2 **A. Yes.**
 3 Q. Do you think that it attracted more attention
 4 than it deserved among all the issues presented to the
 5 school board?
 6 **A. Oh, definitely.**
 7 Q. I am going to ask you some questions about why
 8 it might have gotten as much attention as it got.
 9 Did you ever hear any constituent say to
 10 you -- and by constituent, I mean student, parent,
 11 resident of the district, fellow board member,
 12 whatever -- did you ever hear any constituent say to
 13 you, in words or substance, that the defense of this
 14 lawsuit was a defense of Christian values?
 15 **A. I've heard that said.**
 16 Q. And could you tell me who you heard that from?
 17 **A. No, I couldn't.**
 18 Q. Could you tell me the group of which the
 19 person who said that was a member?
 20 **A. No.**
 21 MR. ALLINGHAM: All right. We have to
 22 change the tape. Thank you.
 23 VIDEO SPECIALIST: Going off the record
 24 at 3:35 p.m.

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1 **years. Something else too.**
 2 **I have been a coach in Little League**
 3 **baseball and Little League wrestling and football.**
 4 **Oh, American Legion, I'm a member of**
 5 **that too.**
 6 Q. I should have asked you this at the beginning
 7 of the deposition. Are you employed?
 8 **A. Yes.**
 9 Q. And what is your position?
 10 **A. I'm a crematory manager at Parsell Funeral**
 11 **Homes.**
 12 Q. And is that in Georgetown?
 13 **A. That's one of them. It has four branches.**
 14 Q. And have you had -- did you have that job
 15 throughout your tenure as a school board member?
 16 **A. No.**
 17 Q. What did you do?
 18 **A. I worked at E.I. du Pont in Seaford until**
 19 **2001.**
 20 Q. And that's when you took the job --
 21 **A. Yes. I retired from DuPont and took the job**
 22 **with the funeral home.**
 23 Q. Thank you.
 24 Were you surprised at the amount of

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1 (Recess.)
 2 VIDEO SPECIALIST: Going back on the
 3 record at 3:41 p.m.
 4 BY MR. ALLINGHAM:
 5 Q. Right before we broke, Mr. Walls, I asked you
 6 whether you had heard from anyone that the defense of
 7 this lawsuit represented the defense of Christian
 8 values, and you said yes. I asked you who said it, and
 9 you didn't remember. I asked you from what group, and
 10 you didn't remember that either.
 11 Is it fair to say that you heard it more
 12 than once, however?
 13 **A. Yes, I'd say that's fair to say.**
 14 Q. When I asked you questions about the
 15 attendance, expected attendance --
 16 **A. At the big meeting.**
 17 Q. -- at the August 24th meeting, you told me you
 18 knew it was going to be a big meeting, but you really
 19 didn't know how, that you just hear things in Sussex
 20 County; right, correct?
 21 **A. Correct.**
 22 Q. Is it fair to say that it is a widely held
 23 view in the Indian River District that the defense of
 24 this lawsuit represents a defense of Christian values?

23 (Pages 86 to 89)

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1 A. There's a lot of perceptions out there about
2 this lawsuit, I think, and not all of them are correct.
3 Q. That may or may not be true, but it's not
4 100 percent responsive to my question.
5 Would you agree with me that it's a
6 widely held view in the district that the defense of
7 this lawsuit is a defense of Christian values?
8 A. It's probably widely held in this district.
9 Q. You mentioned some potential misperceptions
10 about this lawsuit.
11 A. Uh-huh.
12 Q. Could you tell me what you had in mind when
13 you said that?
14 A. I hear things from time to time or see things,
15 and I wondered where the people are coming from because
16 they act like they know, but I know that they don't.
17 Q. So when you said that, you didn't have any
18 particular misperception in mind?
19 A. No.
20 Q. Is it fair to say that a lot of the comments
21 at the August 24th board meeting reflected a
22 misperception about what the board was considering at
23 that time?
24 A. Yes.

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1 A. I don't remember that.
2 Q. That would be contrary to --
3 A. I mean but if this was the draft policy you're
4 talking about?
5 Q. Yes, yes.
6 A. I can't see why someone would want a draft
7 policy.
8 Q. Well --
9 A. And I don't know that the board has ever given
10 out a draft policy before it's actually adopted.
11 Q. What is the purpose of the readings of the
12 policies?
13 A. In case the board has second thoughts or wants
14 to make changes on something, it gives a chance to do
15 that.
16 Q. It is not intended to give the public an
17 opportunity to review and comment on the policies?
18 A. After the first reading, yes, but I'm not
19 giving something out to the public before I give to the
20 board on a first reading.
21 Q. I thought we might be misunderstanding one
22 another.
23 I'm talking about a request made for the
24 proposed policy after the first reading?

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1 Q. And is that, was that misperception or did the
2 comments reflect a misperception that the issue was
3 prayer in the schools rather than --
4 A. Yes.
5 Q. -- school board?
6 A. I heard that from several of the speakers.
7 Q. Am I correct that you and the other board
8 members did not try to correct that misperception
9 because the public comment section is meant to be an
10 opportunity for the board to hear from the public and
11 not vice versa?
12 A. Correct.
13 Q. And that's something that the superintendent
14 had urged the board to remember; correct?
15 A. Yes.
16 Q. Do you know whether at any time before or
17 after the adoption of the board prayer policy a member
18 of the public asked for a copy of the proposed policy
19 and was -- and that request was declined?
20 A. I don't remember if somebody specifically
21 asked.
22 Q. You never heard that a person asked for a copy
23 of the policy and was told that if they wanted it, they
24 should file a Freedom of Information Act request?

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1 A. I don't remember. I mean but to me that's
2 public information.
3 Q. Should have been given to the person who
4 requested it?
5 A. Yes.
6 Q. After the religion policies were adopted -- by
7 religion policies, I mean the --
8 A. There's three of them.
9 Q. -- graduation, religion and board prayer --
10 A. Yes.
11 Q. I want to show you a copy of a document that
12 we've marked as PX-49. This is a letter from me to the
13 board of education dated, Indian River Board of
14 Education, dated November 12th, 2004.
15 It's a lengthy letter. I recall
16 spending time on it.
17 A. Yes, I recall it.
18 Q. Did you see it?
19 A. Yes.
20 Q. Did you read it?
21 A. Yes.
22 Q. Did you actually receive a copy in the mail?
23 A. I don't know. I may have.
24 Q. Whether you got it from the district or you

24 (Pages 90 to 93)

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1 got it in the mail, you have read a copy of it;
 2 correct?
 3 **A. Right.**
 4 Q. In the first paragraph, PX-49, the letter
 5 records, "We represent Mona Dobrich and her family. We
 6 have reviewed the Indian River School District's
 7 policies on 'School Prayer at Commencement/Graduation
 8 and Baccalaureate Ceremonies,' 'Board Prayer at Regular
 9 Board Meetings,' and 'Religion,' which are then
 10 referred to as "the policies," "and have the following
 11 questions regarding the policies. We commend the board
 12 for recognizing its obligation to adhere to Federal and
 13 State constitutional principles and provisions,
 14 statutes and regulations pertaining to religious
 15 observances in public schools and the matters addressed
 16 in the policies. Our requests are designed to help us,
 17 and we hope the board as well, understand whether the
 18 policies accomplish that goal. We look forward to your
 19 responses and to working constructively and
 20 cooperatively with you to ensure that the district's
 21 policies are in accord with constitutional principles."

22 As a board member, when you read this
 23 letter, did you understand it to be a threat of
 24 litigation?

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1 that you thought was threatening in tone?
 2 **A. Well, I have certainly never had a lawyer**
 3 **write to me as policy committee chairman or board**
 4 **president with 21 questions being asked by a lawyer to**
 5 **explain policies.**
 6 Q. I don't doubt that, but is just the asking of
 7 questions, in your view, threatening?
 8 **A. From a lawyer, then I'm going to have a lawyer**
 9 **answer those questions.**
 10 Q. Did you instruct a lawyer to answer the
 11 questions posed in the November 12th letter, which
 12 we've marked as PX-49?
 13 **A. I did not.**
 14 Q. What did you do with this letter when you
 15 received it?
 16 **A. Basically, like I said, it was presented to**
 17 **Mr. Neuberger and he made the recommendation that it**
 18 **not be answered.**
 19 Q. And who made the decision to present this
 20 letter to Mr. Neuberger?
 21 **A. That could have been me or it could have been**
 22 **the entire board.**
 23 Q. Do you remember whether it was you or the
 24 board?

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1 **A. I thought it was.**
 2 Q. What was it about this letter that you thought
 3 represented a threat of litigation?
 4 **A. Well, one would have been we represent Mona**
 5 **Dobrich and her family.**
 6 Q. You think every communication from a lawyer
 7 represents a threat of litigation?
 8 **A. It sure does.**
 9 Q. Really?
 10 **A. To me.**
 11 Q. That's actually what you think?
 12 **A. Yes.**
 13 Q. Apart from the fact that it was written by a
 14 lawyer representing someone, was there anything else
 15 about the letter that you viewed as threatening in
 16 tone?
 17 **A. Yes. We were advised by Mr. Neuberger not to**
 18 **answer these complaints, that the policies should stand**
 19 **on their own and speak for themselves. And anything we**
 20 **did to answer all of these would just be giving you**
 21 **ammunition to use in a future lawsuit, which is true.**
 22 Q. My question, though, is a little different.
 23 Was there anything in the letter other than the fact
 24 that it was written by a lawyer representing someone

1 **A. I don't remember specifically who gave it to**
 2 **Mr. Neuberger.**
 3 Q. Did you think that if you weren't going to
 4 respond that you should respond that you weren't going
 5 to respond?
 6 **A. I thought we did. I thought we were -- a**
 7 **letter was sent saying that the policies speak for**
 8 **themselves.**
 9 Q. Do you know when that letter was sent?
 10 **A. No, I have not a clue.**
 11 Q. This has been marked as PX-50.
 12 This is a letter of December 16, 2004,
 13 directed to the board of education, Mr. Griffin,
 14 Miss Hobbs.
 15 **A. Okay.**
 16 Q. From me.
 17 It references the November 12th letter
 18 that we just looked at and points out that to date we
 19 have not received answers to our questions or a
 20 statement from the board showing its intent to reply.
 21 **A. Uh-huh.**
 22 Q. Did you get a copy of this letter?
 23 **A. Yes, I think I did.**
 24 Q. And did you instruct someone to respond?

25 (Pages 94 to 97)

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1 **A. Did I instruct someone to respond? No.**
 2 **Again, we were under advice not to.**
 3 Q. Let me show you a copy of what we've marked as
 4 PX-51.

5 This is a letter dated January 7, 2005,
 6 from me to the Board of Education of the Indian River
 7 School District. The first paragraph reads, "We
 8 appreciated the recent phone call from the Indian River
 9 School District's attorney James Griffin and the
 10 materials that he provided for our review. We hope
 11 that communication between the Indian River Board of
 12 Education and our client Mona Dobrich will continue and
 13 remain constructive."

14 Were you aware that a phone call was
 15 made from Mr. Griffin to the lawyers for Mrs. Dobrich?

16 **A. I can't remember that.**

17 Q. Were you aware that Mr. Griffin provided
 18 materials for Mrs. Dobrich's attorneys' review?

19 **A. I think he did. I can't remember everything
 20 that occurred back in 2004.**

21 Q. I had understood from your earlier testimony
 22 that Mr. Neuberger had advised the board not to respond
 23 to the November and December letters from me; correct?

24 **A. That's correct.**

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1 by the board to the attorney one way or the other is
 2 attorney-client privilege. I am going to instruct the
 3 witness not to answer.

4 **BY MR. ALLINGHAM:**

5 Q. Why did the board make the decision to tell
 6 Mr. Griffin not to act for the board in connection with
 7 this lawsuit?

8 **A. Because I think we were going under the advice
 9 of Mr. Neuberger.**

10 Q. Mr. Griffin was the board's attorney at that
 11 time; correct?

12 **A. That's correct.**

13 Q. Mr. Neuberger had not been retained by the
 14 board; correct?

15 **A. Not the board, no.**

16 Q. He had been retained by Mr. Helms?

17 **A. That's correct.**

18 Q. Okay.

19 But the board took Mr. Neuberger's
 20 advice as to whom should speak for the board and the
 21 district in connection with this lawsuit?

22 **A. At that particular time, yes.**

23 Q. Let me ask you a question. Didn't there come
 24 a time when Mr. Neuberger offered to represent the full

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1 Q. This letter reflects, and your testimony a
 2 minute ago reflects that Mr. Griffin provided materials
 3 for the review, for review by Mrs. Dobrich's attorneys.

4 Was that with or without authorization
 5 from the board?

6 **A. Provided materials to who?**

7 Q. The materials were provided for in the
 8 letter "our review," "our" referring to the lawyers for
 9 Mrs. Dobrich?

10 **A. Oh, the materials that you were given by
 11 Mr. Griffin?**

12 Q. Yes.

13 **A. I don't know what materials they were.**

14 Q. Was Mr. Griffin subsequently instructed not to
 15 act for the board in connection with this lawsuit?

16 **A. I think at one point he may have been.**

17 Q. Who gave him that instruction?

18 **A. That would have been the entire board.**

19 Q. And was that at a board meeting?

20 **A. I don't know.**

21 Q. What do you recall about the instruction given
 22 to Mr. Griffin not to act for the board in connection
 23 with this lawsuit?

24 MR. SHAU: Objection. Instruction given

1 board and the district and the full board declined,
 2 affirmatively declined Mr. Neuberger's offer?

3 **A. I don't think the board ever did formally
 4 decline the offer.**

5 Q. Several of your colleagues have testified that
 6 the board did decline the offer?

7 **A. I think Mr. Neuberger declined the board.**

8 Q. That is to say, Mr. Neuberger -- well, let me
 9 see if we are on the same page.

10 The testimony so far has been that
 11 Mr. Neuberger appeared at a board meeting and offered
 12 to represent the board.

13 **A. Uh-huh.**

14 Q. And made a presentation to the board. So far
 15 are we on the same page?

16 **A. Right.**

17 Q. And at the conclusion of that presentation,
 18 Mr. Neuberger, according to some of your colleagues,
 19 said -- delivered an ultimatum to the board and said,
 20 you can either retain me today or I'm out of here. Do
 21 you recall that? I don't mean he said I'm out of here,
 22 but words --

23 **A. I understand the reasoning of where you're
 24 going. That was not quite the specifics of it, but**

26 (Pages 98 to 101)

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1 **it's close.**
 2 Q. Okay. Could you tell me what you recollect
 3 about that meeting?
 4 **A. Yes. Mr. Neuberger did make a proposal to the**
5 board; however, the board did not want to make a hasty
6 decision, and by waiting until the next day and wanting
7 to do something that Mr. Neuberger had advised us not
8 to do, Mr. Neuberger pulled his offer to the board.
 9 Q. Let me see if I can pinpoint that meeting in
 10 time; okay? It was before the adoption of the board
 11 policy on school board prayer; correct?
 12 **A. I don't know.**
 13 Q. I am going to show you a document that is
 14 called a privilege log. It's a document prepared by
 15 your attorneys, and its purpose is to identify by, if
 16 possible, the date, the author, the recipient, and a
 17 brief summary of the subject matter documents which are
 18 privileged or which -- as to which there's been a claim
 19 of privilege so they haven't been given to us. Okay?
 20 We have marked this as Plaintiffs'
 21 Exhibit 59.
 22 **A. Well, if these are privileged, how come you**
have them?
 24 Q. I probably didn't explain it well enough.

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1 been that Mr. Neuberger appeared before the board once
 2 by, at a long board meeting, once on the telephone and
 3 once in person. Does that comport with your
 4 recollection?
 5 **A. That seems reasonable.**
 6 Q. We have been told by Mr. Gosselin that the
 7 telephone appearance, if you will, was at an
 8 August 23rd, 2004 board meeting the day before the big
 9 meeting. And I'll show you the minutes of that meeting
 10 in a minute. It doesn't show Mr. Neuberger there, but
 11 as Mr. Gosselin explained, because I was too thick to
 12 figure it out, he wasn't there but he was there on the
 13 telephone.
 14 **A. Okay.**
 15 Q. So I'll show you those minutes and we'll see
 16 if we can confirm that.
 17 The only other meeting at which there's
 18 any indication that Mr. Neuberger was present is a
 19 September 15th meeting, so let me mark and then show
 20 you the minutes of that meeting.
 21 I'm going to have marked as PX-63 a
 22 document bearing Bates number IRSD 45715 through 718.
 23 (PX-63 was marked for identification.)
 24 BY MR. ALLINGHAM:

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1 It's not always easy.
 2 I don't have them. What I have is, if
 3 you look at the document, look at the next page, for
 4 example.
 5 **A. Okay.**
 6 Q. What I have is sort of a very short
 7 description so that I know what it is that Mr. Shau and
 8 Mr. Gosselin haven't given us.
 9 **A. Oh, okay.**
 10 Q. Privilege logs are sometimes helpful in, you
 11 look at the date of a document and it might remind you
 12 when something occurred, and so what I'd like to do --
 13 bear with me for just a minute.
 14 **A. So this is a list of all the information**
15 Mrs. Hearn gave you or didn't give you? Or gave them
16 but they didn't give you at all?
 17 Q. Yes. We didn't prepare it. Your lawyers
 18 prepared it.
 19 **A. Okay.**
 20 Q. It's intended to give us just a quick
 21 description of what it is that's been withheld.
 22 **A. All right.**
 23 Q. On privilege grounds.
 24 The testimony from your colleagues has

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1 Q. You will see, Mr. Walls, on the last page that
 2 the minutes bear Miss Hobbs' signature.
 3 **A. Uh-huh.**
 4 Q. And that indicates that they are the final
 5 minutes of the meeting; is that correct?
 6 **A. I assume they're the final minutes. I don't**
7 know what constitutes final and what constitutes
8 amended minutes.
 9 Q. Well, it wasn't meant to be a tricky question.
 10 The minutes are not inserted into the district's minute
 11 book until they're signed --
 12 **A. Oh, is that right?**
 13 Q. -- they are signed by Miss Hobbs; is that
 14 correct?
 15 **A. I don't see the district minute book.**
 16 Q. When you vote as a board member on the minutes
 17 of previous meetings, do you understand that when those
 18 minutes are adopted --
 19 **A. That's when they're posted.**
 20 Q. Yes.
 21 **A. Okay.**
 22 Q. Okay.
 23 These minutes were actually produced to
 24 us today -- maybe they were produced before too -- but

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1 produced to us today as an accommodation by your
2 counsel from, as I understand it, the minute book of
3 the board minutes here at the district.
4 **A. Okay.**
5 Q. And they are the minutes of the September 15,
6 2004 special meeting of the board of education.
7 You are reflected as having been present
8 under roll call. Do you see that?
9 **A. Yes.**
10 Q. And farther down, a little bit farther down
11 the page, under other visitors and staff in attendance,
12 you'll see that both Mr. Griffin and Mr. Neuberger were
13 present at this meeting.
14 **A. Yes.**
15 Q. All right. Am I correct that at this point
16 the board had not retained Mr. Neuberger to represent
17 him?
18 **A. The board never did retain Mr. Neuberger.**
19 Q. Do you know who invited Mr. Neuberger to
20 appear before the board on September 15th?
21 **A. Not specifically. It could have been me.**
22 Q. Do you know why Mr. Neuberger was invited to
23 appear before the board?
24 **A. Do I know exactly why? No.**

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1 Q. I want you to tell me what you recall of the
2 discussions about whether to retain Mr. Neuberger?
3 **A. There was hopes that the board would be able**
4 **to retain Mr. Neuberger.**
5 Q. And who expressed those hopes?
6 **A. I expressed them.**
7 Q. Anybody else?
8 **A. Other board members did as well.**
9 Q. Who else?
10 **A. I think just about every one of them.**
11 Q. And what prevented the board from retaining
12 Mr. Neuberger?
13 **A. Mr. Neuberger.**
14 Q. So the board expressed the hope that
15 Mr. Neuberger would agree to represent the board;
16 correct?
17 **A. Yes.**
18 Q. Did anyone express opposition to the retention
19 of Mr. Neuberger?
20 **A. Some people had reservations.**
21 Q. Who were they?
22 **A. I remember Mr. Cohee having reservations, I**
23 **remember Dr. Isaacs having reservations.**
24 Q. What was the nature of their reservations?

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1 Q. Had there been discussion going on for a
2 period of weeks or months about whether Mr. Neuberger
3 would be retained to represent the board?
4 **A. Yes.**
5 Q. And was that discussion among individual board
6 members or at board meetings?
7 **A. At board meetings.**
8 Q. And since the discussion went on for quite
9 some time, would I be right in assuming that some board
10 members were in favor of retaining Mr. Neuberger and
11 some were against?
12 **A. I don't think we ever got to that point.**
13 Q. Well, then, tell me the nature of the
14 discussion of whether to retain Mr. Neuberger?
15 **A. I don't see why I should have to tell you what**
16 **discussions between the board and an attorney.**
17 MR. SHAU: You can answer as to the
18 discussions.
19 BY MR. ALLINGHAM:
20 Q. These are not discussions with Mr. Neuberger.
21 These are discussions among board members about whether
22 to retain Mr. Neuberger.
23 **A. What is it you want me to tell you, why we**
24 **wanted to --**

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1 **A. They weren't sure that Mr. Neuberger was the**
2 **right person for this case.**
3 Q. Did they express why they felt that way?
4 **A. No, not that I can remember.**
5 Q. Did anybody say, well, we have a board
6 attorney, why do we need to retain someone else?
7 **A. Somebody may have said that.**
8 Q. You don't recall one way or another whether
9 they said that?
10 **A. I don't remember whether somebody said that,**
11 **no.**
12 Q. On the minutes of the September 15th meeting,
13 you'll see about halfway down the page that it was
14 moved by Dr. Hattier, seconded by Mr. Hastings, to go
15 into executive session at 7:02 p.m., or two minutes
16 after the meeting was called to order.
17 Do you see that?
18 **A. Yes.**
19 Q. And was that executive session to discuss the
20 potential litigation?
21 **A. Correct.**
22 MR. SHAU: Objection. The discussions in
23 the executive meeting were held in the presence of
24 Mr. Griffin, the board attorney, and are therefore

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1 attorney-client privilege.
 2 MR. ALLINGHAM: The purpose of going into
 3 executive session is attorney-client privilege?
 4 MR. SHAU: Ask your question again.
 5 BY MR. ALLINGHAM:
 6 Q. Why did the board go into executive session?
 7 A. To discuss potential litigation.
 8 Q. Thanks.
 9 And was that potential litigation this
 10 litigation or this, the complaints that had been
 11 asserted by Mrs. Dobrich?
 12 A. I have to tell you the reasons or what was
 13 discussed in executive session?
 14 Q. No. I just want to know what litigation you
 15 were talking about.
 16 MR. SHAU: You can answer that question.
 17 THE WITNESS: 5-01.
 18 BY MR. ALLINGHAM:
 19 Q. And is that the complaint -- was that a file
 20 that was opened in response to Mrs. Dobrich's
 21 complaints?
 22 A. It could have been.
 23 Q. Do you know?
 24 A. Specifically do I know what number applies to

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1 Q. The way this process works, Mr. Walls, is that
 2 I ask you a question, your counsel has the right to
 3 interpose an objection, and if he thinks it's
 4 appropriate, an instruction to you not to answer. But
 5 in the absence of an instruction, the reason you're
 6 obligated to answer is because you swore to tell the
 7 truth to the questions you're asked. So I'm going to
 8 pose my question again and then we'll go through that
 9 process; all right?
 10 A. Uh-huh. Okay.
 11 Q. Okay.
 12 My question to you is, during the
 13 meeting on September 15th, 2004, which we have the
 14 minutes of in front of you --
 15 A. Uh-huh.
 16 Q. -- did Mr. Neuberger provide you with a packet
 17 of information in connection with legal representation?
 18 A. He could have. I don't recall what he gave
 19 us.
 20 Q. Okay.
 21 Is September 15th, according to your
 22 best recollection, the meeting at which Mr. Neuberger
 23 delivered the ultimatum that we talked about earlier?
 24 A. Yes. I don't know that I ever took it as an

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1 who? No. But it would be my guess.
 2 Q. All right. Mr. Neuberger was there and
 3 Mr. Griffin was there. You understood that,
 4 Mrs. Dobrich's complaints; correct?
 5 A. I would think.
 6 Q. Okay.
 7 On the log, the privilege log, which I
 8 gave you earlier, if you look at Item 112, there is the
 9 number column on the far left.
 10 That item reflects the author being
 11 Thomas Neuberger, the date being September 15, 2004,
 12 which is the date of the meeting we were just looking
 13 at.
 14 A. Uh-huh.
 15 Q. And the description being "packet of
 16 information provided to board members in connection
 17 with legal representation."
 18 At this September 15th board meeting at
 19 which Mr. Neuberger was present, did he provide you
 20 with a packet of information regarding legal
 21 representation?
 22 A. He may have.
 23 Q. You don't recall one way or another?
 24 A. I don't see why I would have to tell you that.

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1 ultimatum.
 2 Q. Sorry. You said that earlier. That's my
 3 fault.
 4 Is this the meeting at which
 5 Mr. Neuberger made the presentation and the board
 6 decided -- I'm sorry, and Mr. Neuberger decided
 7 ultimately to withdraw his office with representation?
 8 A. No, he did not decide at that point.
 9 Q. When did he decide?
 10 A. I think it was the next day or the two days
 11 later.
 12 Q. Okay.
 13 And you told me earlier that it was
 14 because the board acted contrary to Mr. Neuberger's
 15 recommendation that he withdrew his offer, do you
 16 recall that?
 17 A. That's correct.
 18 Q. What is it that the board did that was
 19 contrary to his recommendation?
 20 A. We had initially agreed to listen to you.
 21 Q. To listen to me, I assume as a representative
 22 of Mrs. Dobrich?
 23 A. Correct.
 24 Q. Listen to me in connection with the questions

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1 that we posed to you?	1 correct?
2 A. Yes.	2 A. Correct.
3 Q. Okay.	3 Q. Would I be right in assuming that it was
4 I'm sure it's my fault -- I've done this	4 Mr. Helms who communicated the board's wish to Mr. --
5 before because I'm not getting things correctly -- but	5 A. That's been my suspicion.
6 this meeting is on September 15th.	6 Q. And then because Mr. Neuberger had withdrawn
7 A. Right.	7 his offer of representation, the board changed its mind
8 Q. My first letter to the board was dated	8 and decided not to engage in discussions with
9 November 14th, I think, or mid-November.	9 Mrs. Dobrich's representatives; correct?
10 A. You must have asked something before the 15th.	10 A. Correct.
11 Q. Okay.	11 Q. And did that, did the change in the board's
12 A. Or somebody must have, and I can't imagine it	12 decision take place at a board meeting?
13 being anybody other than you.	13 A. No. I made that decision as board president.
14 Q. Initially the board decided to engage in some	14 Q. Did you consult with your fellow board
15 kind of discussion with representatives of	15 members?
16 Mrs. Dobrich?	16 A. No. If so, it was by phone, but we had no
17 A. Initially.	17 meeting, special meeting to discuss it.
18 Q. Okay.	18 Q. After the board -- well, I guess you as board
19 And that was contrary to Mr. Neuberger's	19 president changed its position on engaging in
20 advice?	20 discussions with Mrs. Dobrich's representatives, did
21 A. That's correct.	21 Mr. Neuberger renew his offer to represent the board?
22 Q. And Mr. Neuberger withdrew his offer of	22 A. No.
23 representation because the board --	23 Q. Did you make the decision not to engage in
24 A. That's correct.	24 discussions with Mrs. Dobrich's representatives with
<hr/>	
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1 Q. -- wanted to engage in discussions?	1 the hope that Mr. Neuberger would renew his offer of
2 A. That's correct.	2 representation?
3 Q. Ultimately the board did not engage in	3 A. Yes.
4 discussions with representatives of Mrs. Dobrich;	4 Q. So I take it you were disappointed that he did
5 correct?	5 not do so?
6 A. That's correct. Correct.	6 A. Yes.
7 Q. What caused the board to change its mind?	7 Q. When he did not renew his offer, did you
8 A. The removal of the offer.	8 consider again the possibility of engaging in
9 Q. Okay. Let me see if I can get the sequence	9 discussions with Mrs. Dobrich's representatives?
10 right, okay?	10 A. No.
11 At the September 15th meeting,	11 Q. Why not?
12 Mr. Neuberger offered to represent the board; correct?	12 A. I didn't see the purpose without legal
13 A. Yes, I think so, if that's the meeting I'm	13 representation. At that particular time we had none.
14 thinking of.	14 Q. You had the board's attorney; correct?
15 Q. At that meeting, Mr. Neuberger advised the	15 A. We had the board's attorney, but he was not
16 board not to engage in discussions with Mrs. Dobrich's	16 involved with this case.
17 representatives; correct?	17 Q. As early as September of 2004?
18 A. Yes.	18 A. I would -- I can't remember the exact dates.
19 Q. The board determined that it wished to engage	19 Q. The reason I ask is that there are documents
20 in discussions with Mrs. Dobrich's representatives;	20 on the privilege log that appear to reflect a
21 correct?	21 continuing request for advice to Mr. Griffin?
22 A. Yes.	22 A. He was our board attorney, but as far as him
23 Q. When Mr. Neuberger found out about that a day	23 actually doing the representation to us for this
24 or two later, he withdrew his offer of representation;	24 particular case, we knew we needed, we needed

30 (Pages 114 to 117)

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1 **additional legal advice.**
 2 Q. If you look at Item 7 of the privilege log,
 3 you'll see that there is a fax from Lois Hobbs to
 4 Mr. Griffin dated September 24, 2004, or essentially --
 5 **A. Correct.**
 6 Q. -- the same time as this board meeting on
 7 September 15th, which is described as requesting legal
 8 analysis and advice.
 9 Does that refresh your recollection that
 10 Mr. Griffin was being asked for advice on the issues
 11 presented in this case at least as of September 24,
 12 2004?
 13 **A. Yes. And probably later than that as well.**
 14 Q. So the board did have representation at the
 15 time when it made its original decision to engage
 16 Mrs. Dobrich's representatives in discussions?
 17 **A. Yes, I think we did.**
 18 Q. Do you know, roughly speaking, when
 19 Mr. Griffin was told not to speak for the board in
 20 connection with this litigation?
 21 **A. No, I can't remember just when.**
 22 Q. Is it correct that it was after the adoption
 23 of the board policies?
 24 **A. Yes.**

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1 **January 7th, 2005 --**
 2 **A. Yes.**
 3 Q. -- said, in effect, thank you for the call
 4 from Mr. Griffin and the materials that he provided.
 5 Okay.
 6 So we have a letter regarding legal
 7 representation from Griffin to you on January 3rd. We
 8 have a call from Mr. Griffin to me some time before
 9 January 7th, and then on January 18th, and I'd now like
 10 you to look at Item 42, there is a letter from
 11 Mr. Griffin to Mr. Kellum, you and Ms. Hobbs again
 12 regarding legal representation.
 13 **A. Right.**
 14 Q. Is that a letter in which Mr. Griffin resigned
 15 his representation of the board in connection with this
 16 litigation?
 17 MR. SHAU: Objection. The contents of
 18 that letter are attorney-client privilege. I am going
 19 to instruct the witness not to answer.
 20 BY MR. ALLINGHAM:
 21 Q. Do you recall that the board's statement to
 22 Mr. Griffin that he should not represent the board in
 23 this litigation occurred on or about the first couple
 24 of weeks of January of 2005?

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1 Q. Let me show you a couple of items on the
 2 privilege log.
 3 I'm sorry, Mr. Walls, it's not organized
 4 by any --
 5 **A. I was going to say.**
 6 Q. It is sometimes hard to find things. If
 7 you'll look at Items 42 and 43.
 8 **A. Okay.**
 9 Q. Item 43 is a letter from Mr. Griffin to you
 10 dated January 3, 2005, regarding legal representation,
 11 and I want to draw a distinction between that
 12 description, and just by way of example the description
 13 of the item two items above it, which is a fax from
 14 Ms. Hobbs to Mr. Griffin requesting legal analysis and
 15 advice. And I will tell you that the counsel who
 16 prepared this log used that phrase, "requesting legal
 17 analysis and advice" quite frequently and used the
 18 phrase "regarding legal representation" quite
 19 frequently. They seem to mean different things.
 20 Do you recall having a discussion or
 21 communication with Mr. Griffin regarding legal
 22 representation in early January of 2005?
 23 **A. We may have.**
 24 Q. The letter from me that I showed you on

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1 **A. It could very well have.**
 2 Q. When you say "it could very well have," does
 3 that mean that having reviewed this log and the letter
 4 from me that it's your best recollection that that's
 5 about the time it occurred?
 6 **A. January of 2005?**
 7 Q. Yes, sir.
 8 **A. That could be accurate.**
 9 Q. Why did the board decide to discharge
 10 Mr. Griffin for that purpose?
 11 **A. The board did not want Mr. Griffin
 12 representing us on this case.**
 13 Q. Why?
 14 **A. Because we had philosophical differences with
 15 Mr. Griffin.**
 16 Q. What was the nature of the philosophical
 17 differences?
 18 MR. SHAU: Objection. The differences
 19 between counsel and their client are attorney-client
 20 privilege.
 21 MR. ALLINGHAM: Not if they're not in
 22 connection with the attorney-client relationship.
 23 MR. SHAU: Did you discuss your
 24 differences with Mr. Griffin?

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October 25, 20061 THE WITNESS: One of the differences
2 was --3 MR. SHAU: Before you answer, did you
4 discuss these differences with Mr. Griffin?

5 THE WITNESS: Portions of them.

6 MR. SHAU: I am going to instruct the
7 witness not to answer, not to disclose any
8 conversations he has had with Mr. Griffin relating to
9 the representation.10 MR. ALLINGHAM: I'm completely in
11 agreement with that instruction. Okay?

12 BY MR. ALLINGHAM:

13 Q. Don't tell me what you told Mr. Griffin on
14 this topic. Don't tell me what Mr. Griffin told you on
15 this topic. I just want to know what you understood
16 the philosophical differences between you and
17 Mr. Griffin to be that led you to not want him to
18 represent you in connection with this litigation?19 A. **One was his actual recommendation to us that
20 we would make him a rich man if he were to be our
21 lawyer. That was a specific recommendation from him.**22 MR. SHAU: I am going to instruct the
23 witness not to say specific recommendations from
24 Mr. Griffin.

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1 see Item 106 is a fax from Beth Procheska to you dated
2 August 25, 2004, with the description being "fax
3 providing legal analysis and advice." Okay?4 A. **Uh-huh.**5 Q. I'm going to represent to you, sir, having
6 looked through the privilege log that that's the
7 earliest dated document that reflects communications
8 with the Alliance Defense Fund, which is what ADF
9 stands for.10 A. **I find that surprising.**11 Q. That's not to say that you hadn't talked to
12 them earlier. This is only documents, and so this is
13 the first, the earliest dated document that we have
14 seen on the privilege log. Okay?

15 And that actually was my next question.

16 Do you recall communications with representatives of
17 the Alliance Defense Fund earlier than August 25, 2004?18 A. **No, I don't recall that.**19 Q. A minute ago you said you find it surprising
20 that there's a document dated August 25, 2004.21 A. **Yes, I do.**

22 Q. It surprises you that it was this early?

23 A. **Yes.**

24 Q. Okay, thank you.

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1 BY MR. ALLINGHAM:

2 Q. Anything else?

3 A. **We don't know that we as a board did not
4 believe that Mr. Griffin believed in what the board
5 believed in.**

6 Q. What was it that the board believed in?

7 A. **In that the board prayer issue at meeting was
8 legal.**

9 Q. And --

10 A. **And worth fighting for.**11 Q. What was the basis for your belief that
12 Mr. Griffin didn't believe that the board policy was
13 legal?14 A. **Several comments he had made over time.**

15 Q. Okay, don't tell me.

16 We've established that on or about
17 September 15th, maybe a day, maybe two days later,
18 Mr. Neuberger withdrew his offer of representation to
19 you.20 You mentioned much earlier in the
21 deposition that you also had consulted the Alliance
22 Defense Fund in connection with these issues; correct?23 A. **Yes.**

24 Q. If you look at the privilege log again, you'll

1 Do you remember ever getting a memo --
2 I'm sorry, a fax providing legal analysis and advice
3 from a woman named Beth Procheska at the Alliance
4 Defense Fund?5 A. **Do you know what state she was located in?**6 Q. I don't. I think Tennessee, but I don't know
7 that.8 A. **I could have. I got several memos from the
9 ADF.**

10 Q. Is the name familiar to you, Beth Procheska?

11 A. **Not right off.**12 Q. You were surprised that you had a memo from
13 the ADF as early as August 25th?14 A. **Yes.**

15 Q. Why were you surprised about that?

16 A. **Because I don't remember talking to them until
17 after Mr. Neuberger withdrew his offer to the board.**

18 Q. Which would have been mid-September?

19 A. **Yeah.**20 Q. Let me explore that for a minute. Whenever it
21 occurred, what is your recollection about who from the
22 district first contacted the ADF?23 A. **I think I did.**

24 Q. How did you find or how did you identify the

32 (Pages 122 to 125)

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1 Alliance Defense Fund as an organization that you
2 wanted to contact in connection with this dispute?
3 **A. I think another board member may have**
4 **mentioned it to me.**
5 Q. Who was that?
6 **A. It was a place to look for some type of legal**
7 **representation.**
8 Q. Who was that?
9 **A. I can't remember just who. It may have been**
10 **Dr. Hattier.**
11 Q. Whoever it was, is it your recollection, your
12 best recollection that you were the one who initially
13 contacted the ADF?
14 **A. I believe I did with ADF.**
15 Q. Okay. And tell me what you told the ADF?
16 MR. SHAU: Objection. Attorney-client
17 privilege. Even if they were not yet retained, if he's
18 seeking advice from potential counsel, that's
19 protected. I'm going to instruct him not to answer.
20 MR. ALLINGHAM: Well, I disagree, but
21 that's okay, we'll work that out.
22 BY MR. ALLINGHAM:
23 Q. Did you request advice on a particular topic?
24 Don't tell me anything about what the advice was. Just

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1 does not represent the district currently?
2 **A. Yes.**
3 Q. How did it come about that the Alliance
4 Defense Fund ceased to represent the district?
5 **A. Because the insurance company provided**
6 **Cafferkey and John and John, and they wanted to be lead**
7 **counsel, and being they were being paid for it by the**
8 **insurance company, the ADF was asked to basically just**
9 **take an advice on it.**
10 Q. And did they withdraw?
11 **A. Yes, as far as I know they did.**
12 Q. So in terms of setting the timing of that,
13 would I be right in understanding that when
14 Messrs. Balaguer and Cafferkey were retained by the
15 board, the ADF withdrew its representation?
16 **A. Yes.**
17 Q. Okay, Mr. Walls, I am going to ask you a few
18 questions, and it's particularly important in these
19 questions for you not to start to answer before I
20 finish my question and for Jarrod to have an
21 opportunity to object. Okay?
22 When you called the ADF, what facts, if
23 any, did you give to the ADF representative?
24 MR. SHAU: Objection. Attorney-client

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1 did you request advice on a particular topic from --
2 **A. I requested representation.**
3 Q. Okay. So you called the ADF, you got someone
4 on the phone and you said, we've got a dispute
5 involving school prayer, school board prayer,
6 something, and we'd like representation; correct?
7 **A. Yes.**
8 Q. All right. And did you ask for representation
9 for free?
10 **A. Yes.**
11 Q. Was that the purpose of your call?
12 **A. Yes.**
13 Q. What is the response?
14 MR. SHAU: Objection. The response is
15 attorney-client privilege. I'm going to instruct the
16 witness not to answer.
17 BY MR. ALLINGHAM:
18 Q. Did you ever retain the Alliance Defense Fund?
19 **A. I signed a retainer to the Alliance Defense**
20 **Fund at some point.**
21 Q. Can you in any way specify when you signed the
22 retainer?
23 **A. No.**
24 Q. Is it correct that the Alliance Defense Fund

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1 privilege. I'm going to instruct the witness not to
2 answer.
3 BY MR. ALLINGHAM:
4 Q. When you called the ADF, did you offer to
5 provide any documents to the ADF representative?
6 MR. SHAU: I'm going to instruct the
7 witness that, yes, he can say whether he offered to
8 provide documents, but not talk about the substance of
9 any documents.
10 MR. ALLINGHAM: Okay.
11 BY MR. ALLINGHAM:
12 Q. Did you offer to provide documents to the ADF?
13 **A. Yes.**
14 Q. Again, pause, please.
15 What documents did you offer to provide
16 the ADF representative?
17 MR. SHAU: Objection. Attorney-client
18 privilege.
19 BY MR. ALLINGHAM:
20 Q. I'm going to show you two documents. The
21 first one has been marked PX-14 and the second one has
22 been marked PX-13. The first has been identified as
23 the official minutes of a special meeting of the board
24 on August 23, 2004. This would be the day before the

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1 big board meeting. Okay?
 2 **A. Okay.**
 3 Q. If you look at the second page of that
 4 Exhibit 14, you'll see that you called the meeting to
 5 order at 7 p.m. and you immediately went into executive
 6 session at 7:01 p.m., where you remained until
 7 11:15 p.m. The meeting was adjourned at 11:16 p.m.
 8 This meeting has been identified as a
 9 meeting at which the issues relating to religion in the
 10 schools was discussed with Mr. Griffin and by telephone
 11 with Mr. Neuberger.
 12 Does that comport with your
 13 recollection?
 14 **A. I remember Mr. Neuberger being on the**
 15 **telephone, but I can't remember if Mr. Griffin was**
 16 **there.**
 17 Q. If you look at the other visitors and staff in
 18 attendance on the minutes, you'll see that Mr. Griffin
 19 is listed as being in attendance.
 20 **A. Okay.**
 21 Q. Does that refresh your recollection he was
 22 there?
 23 **A. No, but I believe if his name's on here, he**
 24 **was there.**

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1 discussed at this August 23rd meeting was the practice,
 2 the board's practice of opening its meetings with a
 3 prayer?
 4 **A. I don't remember.**
 5 Q. That sentence certainly indicates that that
 6 was an issue being discussed, doesn't it?
 7 **A. It could have been.**
 8 Q. Do you recall whether it was at this meeting
 9 or another meeting that several board members expressed
 10 the view that their constituents did not want the board
 11 to change its practice of opening the meetings with a
 12 prayer?
 13 **A. I think I've heard that.**
 14 Q. Did you express that view?
 15 **A. I don't know if I expressed it or not, but I**
 16 **hold it.**
 17 MR. ALLINGHAM: The videographer tells me
 18 we have almost no time left.
 19 THE WITNESS: What, an hour?
 20 MR. ALLINGHAM: Yes. So we are going to
 21 change the tape.
 22 VIDEO SPECIALIST: Going off the record
 23 at 4:39 p.m.
 24 (Recess.)

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1 Q. I am going to show you another document which
 2 we have marked as PX-13.
 3 **A. What's that mean, redacted?**
 4 Q. This is a word that lawyers use and I think
 5 nobody else.
 6 **A. I have never seen it.**
 7 Q. What it's meant to indicate is that a portion
 8 of the document has been masked out or removed, and in
 9 order so that it's not misleading, you put the word
 10 "redacted" so that somebody would know that something
 11 was taken out.
 12 **A. Okay.**
 13 Q. I believe that the reason that the redactions
 14 were made is because what the minutes reflected was
 15 privileged or there's a claim of privilege.
 16 **A. Okay.**
 17 Q. So there isn't much left, actually, after you
 18 take out all the legal stuff, but there is one
 19 paragraph which I want to discuss with you.
 20 It says, "During the discussion of this
 21 issue, several board members expressed that their
 22 constituents do not want the board to change its
 23 practice of opening the meetings with a prayer."
 24 Do you recall that the issue being

1 VIDEO SPECIALIST: Going back on the
 2 record at 4:52 p.m.
 3 BY MR. ALLINGHAM:
 4 Q. Mr. Walls, we had a discussion before the last
 5 break, a little bit before the last break, in which you
 6 said that you made the decision as board president to,
 7 in response to Mr. Neuberger's withdraw of his offer,
 8 not to engage in discussions with Mrs. Dobrich's
 9 representatives. Do you recall that?
 10 **A. Yes.**
 11 Q. When your decision did not have the desired
 12 effect, that is, to get Mr. Neuberger to renew his
 13 offer, did you give any consideration to going back to
 14 what the board had earlier decided, that is, to engage
 15 in discussions with Mrs. Dobrich's representatives?
 16 **A. No.**
 17 Q. Did you tell the board members that you had
 18 made the decision to override the board decision in
 19 order to try to get Mr. Neuberger to renew his offer?
 20 **A. Yes.**
 21 Q. And what was the reaction of the board
 22 members?
 23 **A. They agreed with me.**
 24 Q. When did you tell the board members that?

34 (Pages 130 to 133)

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1 **A. I'm sure by phone.**
 2 Q. So it wasn't at a formal meeting?
 3 **A. No.**
 4 Q. Just as an example, that series of
 5 communications with the board members represents an
 6 example of communications in which a decision gets made
 7 outside of a regular board meeting; is that correct?
 8 **A. That's correct.**
 9 Q. Okay. Are there Sunshine Law implications
 10 from that?
 11 **A. I have made a decision as a board president at**
 12 **that point. All I did was notify the board of what**
 13 **decision I had made and why.**
 14 Q. Okay. So you didn't reconult with the board;
 15 you just made the decision as board president?
 16 **A. I made the decision. We certainly met at a**
 17 **later date and discussed it.**
 18 Q. All right. I showed you the August 25th
 19 memorandum from Beth Procheska -- well, I didn't show
 20 you the memorandum -- I showed you the entry in the
 21 log -- from Beth Procheska at ADF to you. If you want
 22 to look at it again, it's 106 on the log. Because its
 23 date was two days after the August 23rd executive
 24 session minutes that I showed you a minute ago and one

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1 you, following the August 23rd meeting, at which, as
 2 Mr. Bireley has testified you all wanted a second legal
 3 opinion, did you call the Alliance Defense Fund to get
 4 that second legal opinion?
 5 **A. I don't remember why I called them at that**
 6 **point. Again, I can't --**
 7 Q. You're surprised why --
 8 **A. -- recall why I called that early.**
 9 Q. The next contact with the ADF on the privilege
 10 log is Item No. 103. And this item is described as a
 11 fax requesting legal analysis and advice from you to
 12 Mr. Kellum of the ADF on October 14th, 2004.
 13 To place this in time, this is after the
 14 September 15th sequence in which we've established that
 15 Mr. Neuberger made and then withdrew his offer, but
 16 five days before the board policy on school board
 17 prayer, religion, and graduation ceremonies was
 18 adopted; okay?
 19 My question to you is, why did you make
 20 a request to Mr. Kellum for legal advice on
 21 October 14th?
 22 **A. To me this would have been more in line of my**
 23 **timing of talking to the ADF. It would have been after**
 24 **Mr. Neuberger withdrew his offer.**

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1 day after the big board meeting, okay, just to put it
 2 in time. If you look at the minutes of the executive
 3 session that we were looking at before, just that one
 4 paragraph of text on Exhibit 13, you'll see that the
 5 minutes reflect, quote, it was not felt that a decision
 6 could be made this evening regarding whether or not to
 7 change our past practice.

8 Do you see that?

9 MR. SHAU: Are you looking at PX-13? Or
 10 are you looking at --

11 MR. ALLINGHAM: PX-13.

12 THE WITNESS: Yes, I see it.

13 BY MR. ALLINGHAM:

14 Q. Okay.

15 Mr. Bireley testified that what was
 16 missing, what the board wanted to get in order to be
 17 able to make a decision regarding whether or not to
 18 change your past practice at this meeting, what was
 19 missing and what the board wanted to get was a second
 20 legal opinion.

21 Do you recall that that occurred?

22 **A. I don't recall that, but it sounds like**
 23 **something we would have done.**

24 Q. Okay. Which leads me to my next question, did

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1 Q. Yes.
 2 This fax is not described, however, as,
 3 regarding legal representation, which remember we saw
 4 in the Griffin.
 5 **A. Uh-huh.**
 6 Q. This appears to be a request for actual legal
 7 analysis and advice, and my question to you is, you've
 8 testified a little earlier that you called the ADF and
 9 were looking for representation in connection with the
 10 lawsuit.
 11 **A. Uh-huh.**
 12 Q. Do you recall that you actually sent them a
 13 fax request for legal analysis and advice some time
 14 after you spoke to them by telephone?
 15 **A. Yes.**
 16 Q. And I don't want to know what their advice
 17 was, but was the topic on which you were seeking advice
 18 the issues in this lawsuit?
 19 **A. Yes.**
 20 Q. Now, you'll see two items down that six days
 21 later on October 20th, Mr. Kellum wrote to you a letter
 22 regarding legal representation. Do you see that?
 23 **A. Yes.**
 24 Q. And that's a day after the policies were

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1 adopted.
 2 Is that the retention letter that you
 3 described earlier?
 4 **A. Probably.**
 5 Q. Is that about the right time frame?
 6 **A. It sounds like it could be.**
 7 Q. The next contact with the ADF on the privilege
 8 log is Item No. 62. This is a letter from Mr. Kellum
 9 to you dated December 21, 2004, again regarding legal
 10 representation.
 11 Did you have ongoing discussions with
 12 Mr. Kellum about legal representation?
 13 **A. Yes. I assume you have on here what time John**
 14 **and John came on board.**
 15 Q. We don't.
 16 **A. Well --**
 17 Q. I asked you a question earlier about the
 18 October 20th letter and whether that was an engagement
 19 letter that you signed.
 20 **A. I don't know for certain.**
 21 Q. We now have a letter about two months later
 22 still regarding legal representation. Does that
 23 suggest to you that the October letter probably was not
 24 an engagement letter?

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1 Alliance Defense Fund after October 14th, 2004, which
 2 is the fax from you requesting legal advice, there is
 3 no response from the Alliance Defense Fund giving legal
 4 advice.
 5 Do you recollect that you ever got back
 6 from the Alliance Defense Fund any communication of
 7 legal advice on the topics that you requested?
 8 **A. Yes, I think we did.**
 9 Q. Okay. And would I be correct that you don't
 10 recall exactly when that occurred?
 11 **A. No.**
 12 Q. Did you keep whatever you got from --
 13 **A. Yes.**
 14 Q. -- the Alliance Defense Fund?
 15 **A. Yes.**
 16 Q. And did you provide it to Mrs. Hearn --
 17 **A. Yes.**
 18 Q. -- when she asked?
 19 **A. And that's probably why the list is here.**
 20 Q. We try so hard to be organized.
 21 **A. Hey, you should see my desk.**
 22 Q. Let me show you what we have previously marked
 23 as Plaintiffs' Exhibit 58. Sorry.
 24 **A. That's all right.**

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1 **A. It may not have been.**
 2 Q. The next communication from you to -- sorry,
 3 from Mr. Kellum to you is Item No. 5 on the log, which
 4 is a February 4, 2005 letter regarding legal
 5 representation, again, from Mr. Kellum to you.
 6 Does that suggest to you that the
 7 December 21st letter was not an engagement letter since
 8 you're still corresponding with Mr. Kellum about
 9 representation?
 10 **A. I don't know. If I knew when John and John**
 11 **came on board, then it would give me a better idea of**
 12 **just the actual correspondence.**
 13 Q. Well, let me ask you a couple of questions
 14 about that. This lawsuit was filed on February 28th.
 15 **A. Okay.**
 16 Q. Am I right that you did not retain
 17 Mr. Balaguer and Mr. Cafferkey until some time after
 18 the filing of the lawsuit?
 19 **A. Right. The insurance company wouldn't have**
 20 **provided us with a lawyer before an actual lawsuit had**
 21 **been filed.**
 22 Q. Okay.
 23 On the privilege log I'll represent to
 24 you that there is no response from Mr. Kellum or the

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1 Q. This is a letter from Mr. Kellum to me, which
 2 references one of my earlier letters asking for
 3 clarification of the board policies, letter of
 4 December 16th.
 5 In this letter, Mr. Kellum informs me
 6 that, quote, this office has been retained by the Board
 7 of Education for Indian River School District regarding
 8 any possible challenge to policies on school prayer at
 9 commencement/graduation and baccalaureate ceremonies,
 10 board prayer at regular board meetings, and religion."
 11 First of all, is that a correct
 12 statement, was Mr. Kellum's office retained for that
 13 purpose?
 14 **A. Yes.**
 15 Q. And his retention for that purpose was
 16 memorialized in an engagement letter that you signed;
 17 correct?
 18 **A. Yes.**
 19 Q. And would I be right in assuming that that
 20 engagement letter was signed some time shortly before
 21 this letter was sent?
 22 **A. I would assume that.**
 23 Q. Did you make the decision to retain the
 24 Alliance Defense Fund on your own as board president or

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1 was that the subject of a board decision?
 2 **A. That was a board decision.**
 3 Q. And was that a decision taken at a regular
 4 meeting?
 5 **A. That would have been in executive session.**
 6 Q. Executive session of either a regular meeting
 7 or a special meeting?
 8 **A. Yes. One or the other.**
 9 Q. So it's something on which the board actually
 10 votes?
 11 **A. Yes. I don't know if it was an actual vote**
 12 **for it or not, but if there was, it would be reflected**
 13 **in the minutes.**
 14 Q. And if it was not, then the board action was
 15 taken by consensus?
 16 **A. Yes.**
 17 Q. So that when you signed the engagement letter,
 18 you were authorized by the board --
 19 **A. Yes.**
 20 Q. -- to sign it?
 21 Let me show you a document we've
 22 previously marked as PX-23.
 23 First of all, have you ever seen the
 24 first page of PX-23 before?

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1 Q. Yes, sir. And am I then correct that there
 2 was no discussion of the board prayer policy or drafts
 3 thereof at the policy committee?
 4 **A. Concerning board prayer?**
 5 Q. Yes.
 6 **A. No, I don't believe so.**
 7 Q. That is, you don't believe there was
 8 discussion?
 9 **A. If there was, it wasn't me asking for**
 10 **discussion as policy committee chairman on it, because**
 11 **I specifically remember telling them that I'm not going**
 12 **to put them in that position.**
 13 Q. The position of having to deal with the policy
 14 that --
 15 **A. That was controversial.**
 16 Q. That by its terms -- oh, sorry. That was
 17 controversial?
 18 **A. Yes.**
 19 Q. And why did you not want to put them in that
 20 position?
 21 **A. Because this was a policy that I thought was**
 22 **the board's and the board thought it was their policy**
 23 **as well.**
 24 Q. Okay. So one reason that you didn't want to

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1 **A. I don't remember.**
 2 Q. Okay.
 3 The second page is an agenda of a policy
 4 committee meeting.
 5 Is this agenda in the format as you
 6 recall that policy committee agendas were prepared in?
 7 **A. Yes.**
 8 Q. Do you recognize the handwriting?
 9 **A. No.**
 10 Q. Mrs. Bunting has -- Dr. Bunting has, Susan
 11 Bunting has identified this handwriting as hers.
 12 Did she typically attend the policy
 13 committee meetings?
 14 **A. Yes.**
 15 Q. The first page of PX-23 identifies three
 16 policy committee meetings that took place before the
 17 presentation of the school board prayer policy for its
 18 first reading on September 29th. Okay?
 19 **A. Okay.**
 20 Q. Your testimony earlier, if I got it right, was
 21 that you did not present the board prayer policy to the
 22 policy committee; is that correct?
 23 **A. I did not ask for their input other than the**
 24 **format on board prayer.**

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1 present the school board prayer policy to the policy
 2 committee was that you thought it might be
 3 controversial?
 4 **A. That's one reason.**
 5 Q. A second reason was that by its terms it
 6 applied only to the board members themselves?
 7 **A. Correct.**
 8 Q. Okay.
 9 On the second page of this exhibit
 10 you'll see in Dr. Bunting's handwriting just above the
 11 picture on this page, a notation "religion - follow
 12 board's direction."
 13 Do you recall any discussion at the
 14 policy committee about following the board's direction
 15 on religion policies?
 16 **A. I would say that was me directing about the**
 17 **board prayer.**
 18 Q. So this is where you told them you weren't
 19 going to bring that board prayer policy to them?
 20 **A. To them, other than formatting, yes.**
 21 Q. Got it. Thank you.
 22 **A. And I'm not sure if that happened in July or**
 23 **August or September.**
 24 Q. All right. If you look at two pages back on

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1 the fourth page of the exhibit, you'll see there's an
 2 agenda for a policy committee meeting on
 3 September 20th, 2004.
 4 First of all, do you recognize the
 5 handwriting?
 6 **A. No.**
 7 Q. Dr. Bunting thought that it was Mr. Savage's.
 8 Does that help you?
 9 **A. It could have been. It's still too pretty for**
 10 **mine.**
 11 Q. The third item of the agenda reads, "Discuss
 12 proposed policy - board prayer."
 13 Does that alter your recollection in any
 14 way about whether the board prayer policy was discussed
 15 at policy committee meetings?
 16 **A. No. These agendas were not prepared by me.**
 17 **They were prepared by either -- most of the time by**
 18 **Dr. Bunting or Mr. Savage. And most of the time they**
 19 **would go by what we discussed at the previous meeting**
 20 **and just add things that I specifically requested to be**
 21 **added to.**
 22 Q. The sixth item is, "Discussed Dr. Hattier's
 23 concern of appreciation and tolerance of the religious
 24 views of others."

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1 meetings?
 2 **A. Occasionally they were. Sometimes they were**
 3 **and sometimes they weren't.**
 4 Q. Do you know who prepared them if they were
 5 kept?
 6 **A. Usually it was Dr. Bunting.**
 7 Q. Mr. Walls, the draft school board prayer
 8 policy that Mr. Neuberger provided, was that the only
 9 draft that you received of a school board prayer
 10 policy?
 11 **A. That's the only one I remember.**
 12 Q. So you didn't ask Mr. Griffin to draft a
 13 policy?
 14 **A. I don't believe so.**
 15 Q. The board prayer policy relates to prayer at
 16 regular board meetings and you, I think, confirmed for
 17 me that special board meetings are not opened with a
 18 prayer; right?
 19 **A. Correct.**
 20 Q. Is it also correct that committee meetings are
 21 not opened with a prayer?
 22 **A. That's correct.**
 23 Q. Are members of the public invited to attend
 24 committee meetings?

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1 Do you recall a policy committee meeting
 2 at which that topic was discussed?
 3 **A. I can remember, I can remember doing something**
 4 **along those lines, but I don't remember the specifics**
 5 **of what was discussed. And I don't even remember what**
 6 **we were asking for there.**
 7 Q. The handwriting appears to read, "Charlie,
 8 include in bullying. Be more specific re jew boy."
 9 **A. Okay, that's a reference to the bullying**
 10 **policy that was put out by the State of Delaware that**
 11 **we had just adopted a couple years before that. And I**
 12 **think the concern or the discussion there was does the**
 13 **bullying policy cover a lot of Dr. Hattier's concerns**
 14 **as far as somebody bullying somebody on religion.**
 15 Q. Okay. And I take it there was a discussion at
 16 the policy committee about whether that bullying policy
 17 does --
 18 **A. Cover.**
 19 Q. -- cover certain areas?
 20 **A. Yes, I'm sure there were.**
 21 Q. Was there a change made in the bullying
 22 policy?
 23 **A. No, not that I remember.**
 24 Q. Were minutes kept of policy committee

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1 Q. And am I correct that no board member
2 expressed a concern about the school board prayer
3 policy?
4 **A. Not that I can remember.**
5 Q. And that would be true also at the second
6 reading and adoption on October 19th?
7 **A. That would be reflected in the minutes whether**
8 **there was discussion, I would think.**
9 Q. Okay.
10 **A. Or changes. That's the whole purpose of a**
11 **first and second reading.**
12 Q. We talked earlier about the disclaimer you
13 used to read before offering the invitation for the
14 prayer.
15 **A. Right.**
16 Q. What was the purpose of the disclaimer?
17 **A. That was under the legal advice of**
18 **Mr. Neuberger as well.**
19 Q. And was that to offer people the opportunity
20 to get up and leave if they wanted to?
21 **A. Again, we were advised to do that.**
22 Q. Apart from the fact that you got legal advice
23 on the issue, did you have any independent
24 understanding of the purpose of the disclaimer?

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1 **exclamation from the board that the board prayer and**
2 **the way that it's being conducted is legal. And to**
3 **make people aware that it is amongst the adult board**
4 **members present.**
5 Q. Have you ever seen someone leave the room when
6 the disclaimer is read?
7 **A. No.**
8 Q. Do you think that it would, if the disclaimer
9 was read and someone got up and left the room, that it
10 would draw attention to that person?
11 **A. No.**
12 Q. In interviewing candidates for new school
13 board positions or to replace a school board member who
14 is leaving -- well, first of all, as board president,
15 did you ever participate in such interviews?
16 **A. As board president, I think so.**
17 Q. Do you remember asking candidates about their
18 position on religion in the schools?
19 **A. I don't know that I did.**
20 Q. Do you recall anyone asking board candidates
21 about --
22 **A. Not that I can recall.**
23 Q. I asked you earlier whether you thought it was
24 a widely held view in the district that the defense of

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1 **A. Well, an independent understanding, we never**
2 **did it for 30 years prior to that, but we were advised**
3 **at that time to do it, so we did it.**
4 Q. Do you remember anybody asking why you had to
5 do it?
6 **A. No.**
7 Q. As far as you know, there's no purpose for
8 that disclaimer?
9 **A. There's a lot of things lawyers do or advise**
10 **that to me have no purpose, or I don't understand the**
11 **purpose, I'll put it that way.**
12 Q. So let me change my question a little bit.
13 There may or may not be a purpose, but
14 whatever it is, you don't know of any purpose for the
15 disclaimer?
16 **A. No, I don't know the exact purpose.**
17 Q. This is one of those things that lawyers do,
18 as soon as somebody satisfies the exact purpose, then
19 you say, well, what about the general purpose.
20 Is it fair to say, Mr. Walls, that the
21 sum and substance of your knowledge about the
22 disclaimer is that you were advised to read it, but you
23 don't know what the purpose is for it, if any?
24 **A. The only purpose I can see would be for an**

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1 this case was a defense of Christian values. Let me
2 ask you a couple of related questions.
3 Have you ever been told that the defense
4 of this case was a defense of Christian prayer?
5 **A. I don't know if I have been told that --**
6 Q. You don't --
7 **A. -- specifically.**
8 Q. Whether those exact words were used or not,
9 has anyone ever suggested to you or expressed the view
10 to you that the district's defense of this case was a
11 defense of Christian prayer?
12 **A. I suppose some people have.**
13 Q. Would you characterize that as a widely held
14 view in the district?
15 **A. Here in this area, yeah, I would say that's**
16 **probably a widely held view.**
17 Q. Have you ever heard anyone express the view
18 that the result of the 2006 school board election was
19 an endorsement of the stance that the school board took
20 on school board prayer?
21 **A. Results of which election?**
22 Q. The 2006 school board election?
23 **A. There were more than one.**
24 Q. Yes, sir.

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1 **A. Actually, I had very few people even talk to**
2 **me about that election because I was done.**

3 Q. In February of 2006, earlier this year, there
4 was a board meeting at which an earlier proposed
5 settlement of this case was presented to the board.
6 Do you recall that?

7 **A. Yes.**

8 Q. And the board rejected that settlement, do you
9 recall that?

10 **A. That's correct.**

11 Q. Do you recall that when the board came out of
12 executive session Mr. Helms made a statement?

13 **A. Yes.**

14 Q. Did Mr. Helms -- you were board president at
15 the time; correct?

16 **A. No, I don't think so. No.**

17 Q. I'm sorry.

18 **A. Hey, the years run together on me too, believe**
19 **me.**

20 Q. Did you know in advance that Mr. Helms was
21 going to read a statement?

22 **A. I don't know if that was discussed in**
23 **executive session before we came out or not.**

24 Q. Do you know whether Mr. Helms -- he was

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1 MR. ALLINGHAM: Yes.
2 MR. SHAU: How is that relevant to the
3 constitutionality of school board prayer?
4 BY MR. ALLINGHAM:
5 Q. Do you believe that the school board prayer
6 policy benefits students?
7 **A. Do I believe that? Yes.**
8 Q. And would you tell me how?
9 **A. I think this district has been very blessed**
10 **over the years, and for all I know it may be because we**
11 **have asked for divine guidance on our decision making.**
12 **But this is one of the top districts in the state.**
13 Q. Any other ways that the policy benefits
14 students?
15 **A. I think it could very well teach them civics**
16 **in the sense of what's legal and what's not and what's**
17 **right and what's worth fighting for.**
18 Q. What do you mean by that?
19 **A. Well, just because someone who disagrees with**
20 **the policy, the board prayer policy, that doesn't**
21 **necessarily mean that it's illegal or that it's not**
22 **proper.**
23 Q. I see. So you think it's possible that the
24 defense of the lawsuit represents a lesson in civics

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1 reading from a written statement; correct?
2 **A. Yes.**

3 Q. Do you know if Mr. Helms wrote that statement
4 himself?
5 **A. I don't know who wrote the statement.**
6 Q. Did he present it as if it was his own
7 statement?
8 **A. To the board before we came out?**
9 Q. No. I mean when he stated it publicly?
10 **A. Could you rephrase that, please?**
11 Q. He didn't attribute his words to someone else,
12 did he?
13 **A. No. I thought that he was speaking for**
14 **himself.**
15 Q. Do you have a view as to whether continuing
16 this litigation benefits the students of the district?
17 MR. SHAU: Objection. It's outside the
18 scope of this discovery. I'm going to instruct the
19 witness not to answer.
20 MR. ALLINGHAM: Well, this litigation
21 involves school board prayer, which is the topic of
22 this deposition.
23 MR. SHAU: Your question was as to
24 whether it benefits the students?

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1 for the students?
2 **A. It could very well.**
3 Q. And do you think that continuing this
4 litigation benefits students?
5 **A. As far as I know, the board -- the district's**
6 **not the one continuing it.**
7 Q. We are going to have to agree to disagree
8 about that.
9 Whoever is making that decision -- maybe
10 it's a joint decision -- do you think that continuing
11 the litigation benefits students?
12 **A. I think it could.**
13 Q. And how would it do that, in the ways that you
14 described earlier?
15 **A. Right.**
16 Q. Mr. Walls, you testified earlier in the
17 deposition that you and maybe other board members had
18 expressed the sentiment that no one should tell you how
19 to pray. Do you recall that?
20 **A. Right.**
21 Q. And is it your understanding that as an
22 American citizen you have an absolute right to pray
23 however you like?
24 **A. Yes.**

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1 Q. Do you understand that by taking public office
2 that right may be limited in some ways?
3 **A. It depends on which office. In my mind, this**
4 **is a legislative and deliberative body, no different**
5 **than a town council or the US Congress.**
6 Q. All right. You understand, don't you, that
7 the board policy that you adopted imposes limitations
8 on your absolute right to prayer however you like?
9 **A. In what sense?**
10 Q. Well, take a look at the board policy, which
11 is PX-9. I think it is right in front of your counsel.
12 Paragraph 3 of the policy imposes some
13 limitations on what you can say when you offer a
14 prayer; is that right?
15 **A. That's right.**
16 Q. So we can agree that as a private citizen you
17 can pray in a proselytizing way, you can try to convert
18 people, you can derogate or otherwise disparage any
19 particular faith or belief that you like; correct?
20 **A. Correct.**
21 Q. But you agreed to impose limitations or
22 prohibitions on that kind of behavior for prayers
23 offered by board members in their capacity as board
24 members; correct?

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1 end of your tenure as a board member, did you hear
2 anyone offer a policy that you thought violated
3 Paragraph 3?
4 **A. Offered a policy?**
5 Q. Sorry. I'm getting tired.
6 Since October 19th, 2004, and through
7 the end of your tenure as a board member, did you hear
8 any board member offer a prayer to open board meetings
9 that you thought violated Paragraph 3?
10 **A. No.**
11 Q. Do you know or did you have an understanding
12 as to what the enforcement mechanism was to ensure that
13 the opportunity to prayer would not be used or
14 exploited to proselytize --
15 **A. I would assume it would be the board president**
16 **just not asking that person, again, or having a word**
17 **with them and saying that's not the time or place for**
18 **that.**
19 Q. I do say this respectfully, sir, you were the
20 board president and you didn't know, you didn't have an
21 understanding of what proselytizing prayer was. How
22 would you enforce this provision?
23 **A. Well, I would assume that it's anything that's**
24 **either pushing your religion or taking down somebody**

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1 **A. Correct.**
2 Q. Why did you do that?
3 **A. Well, I don't think it needed to be the time**
4 **or place for proselytizing or trying to convert**
5 **anybody.**
6 Q. But you still had an absolute right, as you
7 understood it, to do that; is that correct?
8 **A. Yes.**
9 Q. You just agreed voluntarily to accept those
10 limitations?
11 **A. Yes.**
12 Q. I am going to ask you some questions about
13 that limitation.
14 **A. About what?**
15 Q. That limitation in Paragraph 3.
16 What do you understand the prohibition
17 against proselytizing prayer to mean?
18 **A. Honestly, I'm not certain.**
19 Q. When you adopted this policy -- I'm sorry,
20 voted to adopt this policy, did you have an
21 understanding?
22 **A. Of that particular word, no.**
23 Q. Okay.
24 Since October 19th, 2004, and through the

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1 **else's religion or criticizing them for them -- for**
2 **theirs.**
3 **No one that I know of would have used**
4 **that particular few seconds to convert anybody or try**
5 **to disparage any other faith.**
6 Q. What about proselytizing?
7 **A. I told you before, I'm not absolutely positive**
8 **of the definition of that word.**
9 Q. I'm going to offer you a few, I'm going to
10 give you some examples of prayers and ask you whether
11 in your judgment as a board member in adopting this
12 policy the prayers would have violated Paragraph 3 or
13 been permitted by Paragraph 3, and some of these
14 prayers are intentionally meant to be extreme so don't
15 be afraid to say, yeah, that would violate the policy
16 or, yeah, that's clearly permitted.
17 The first prayer is, "Oh, Lord, please
18 convert the heathens in the audience"?
19 **A. I wouldn't consider that appropriate.**
20 Q. And that would be prohibited by Paragraph 3;
21 correct?
22 **A. I don't know if it would be prohibited or not.**
23 **I just wouldn't consider it appropriate.**
24 Q. Well, I'm trying to get a sense of how a board

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1 member and a particular board president would interpret
 2 the school board prayer policy? I picked that prayer
 3 because it seemed to me to be an explicit attempt --
 4 here. I will give you a more extreme one. "Oh, Lord,
 5 please convert the Jews in the audience to the
 6 knowledge and love of our Savior Jesus Christ"?

7 **A. That would be against the policy.**

8 Q. Okay.

9 So if somebody gave that prayer, as
 10 board president, what would you have done? Would you
 11 have spoken to them afterwards?

12 **A. Yes.**

13 Q. And would you have said, look, you can't do
 14 that, it's clearly not right, so don't do it again, or
 15 words to that effect?

16 **A. Yes.**

17 Q. Okay.

18 And having spoken to the board member,
 19 would you then offer them another opportunity as their
 20 name came up in rotation to offer another prayer?

21 **A. I would probably give them another chance.**

22 Q. Everybody gets a second bite at the apple.

23 And if they offered up another inappropriate prayer,
 24 you'd take them out of the rotation?

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1 **A. I would.**

2 Q. All right. I'm going to give you somewhat
 3 less extreme examples. I hope less extreme. That was
 4 pretty extreme. It was the most extreme one I could
 5 think of.

6 A couple of them I have actually had
 7 typed up because they are kind of long so I want you to
 8 be able to read them. This is marked as Plaintiffs'
 9 Exhibit 35.

10 And it reads, "Do not put your trust in
 11 princes, in mortal men who cannot even save themselves.
 12 When their spirit departs, they return to the ground.
 13 On that very day their plans come to nothing. Blessed
 14 is he whose help is the God of Jacob, whose hope is in
 15 the Lord his God, the maker of heaven and earth, the
 16 sea, and everything in them, the Lord who remains
 17 faithful forever. He upholds the cause of the
 18 oppressed and gives food to the hungry. The Lord sets
 19 prisoners free. The Lord gives sight to the blind.
 20 The Lord lifts up those who are bowed down. The Lord
 21 loves the righteous. The Lord watches over the alien
 22 and sustains the fatherless and the widow, but he
 23 frustrates the ways of the wicked. For the wages of
 24 sin is death, but the gift of God is eternal life

42 (Pages 162 to 165)

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1 **A. It's not something I would have said.**
 2 Q. I take it that you don't agree with it?
 3 **A. There's many times Mr. Helms and I haven't**
 4 **agreed over the last 14 years.**
 5 Q. Is this one of those instances?
 6 **A. Yes.**
 7 Q. I think, I have some things just to make sure
 8 we have completed, but I think I'm done. If you'll
 9 give us five minutes, maybe a little more, we'll make
 10 sure everything is covered and then we will come back
 11 on the record. Okay?
 12 VIDEO SPECIALIST: Going off the record
 13 at 5:54 p.m.
 14 (Recess.)
 15 VIDEO SPECIALIST: Going back on the
 16 record at 5:52 p.m.
 17 MR. ALLINGHAM: I am going to ask the
 18 reporter to mark as PX-64 a document bearing Bates
 19 numbers P-129 and 130.
 20 (PX-64 was marked for identification.)
 21 BY MR. ALLINGHAM:
 22 Q. This is an article written by --
 23 MR. SHAU: May I have a copy of this?
 24 MR. ALLINGHAM: Yes, sir.

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1 having suggested that it might be useful to have a
 2 public forum on the issues of prayer that were being
 3 considered by the board in the summer of 2004.
 4 Do you recall having made that
 5 suggestion?
 6 **A. I may have.**
 7 Q. The board never did have a public forum on
 8 those issues, did it?
 9 **A. No.**
 10 Q. Was there a reason for that?
 11 **A. Legal advice.**
 12 Q. From?
 13 **A. Mr. Neuberger.**
 14 Q. Mrs. Dobrich complained about the graduation
 15 prayer at the graduation to Miss Hobbs. Do you recall
 16 that?
 17 **A. Yes.**
 18 Q. She also telephoned you to complain about it.
 19 **A. Yes.**
 20 Q. Was that on or about the day of graduation?
 21 **A. Shortly thereafter.**
 22 Q. And did you tell Mrs. Dobrich that the issue
 23 of prayer at commencement ceremonies was a matter that
 24 should be addressed by the whole board, not by you as

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1 BY MR. ALLINGHAM:
 2 Q. This is an article written by J.L Miller of
 3 the Wilmington News Journal, which we took off their
 4 website.
 5 You can read the whole article if you'd
 6 like, but my question has to do with the last two which
 7 quote you.
 8 **A. (Pause.)**
 9 **The last two paragraphs?**
 10 Q. Yes. You're quoted as saying to Mr. Miller --
 11 not quoted, but reported as saying that the prayer
 12 controversy has sparked strong reactions in his largely
 13 rural Sussex County district and he predicted what
 14 policy emerges will leave someone disappointed.
 15 And then there's a quote, Unfortunately,
 16 I think both sides will be the losers of it, closed
 17 quote, he said.
 18 Did you give that quote to Mr. Miller?
 19 **A. Yes.**
 20 Q. And did you believe it when you said it?
 21 **A. Yes.**
 22 Q. And do you still believe it?
 23 **A. Yes.**
 24 Q. You were quoted in numerous news articles as

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1 an individual member?
 2 **A. I may have.**
 3 Q. You don't have any reason to doubt that that's
 4 true, do you?
 5 **A. No.**
 6 Q. Do you recall Mrs. Dobrich asking you then how
 7 she could bring the issue to the full school board's
 8 attention?
 9 **A. She may have.**
 10 Q. You don't have any reason to doubt her
 11 statement to that effect?
 12 **A. No.**
 13 Q. Did you tell her that the way to do that was
 14 to put the topic on the agenda for the next board
 15 meeting?
 16 **A. I told her I think that a board member would**
 17 **have to put that topic on the agenda.**
 18 Q. And did Mrs. Dobrich ask you to put the item
 19 on the agenda?
 20 **A. I think she did.**
 21 Q. And did you decline?
 22 **A. I think so.**
 23 Q. Why?
 24 **A. Because at the time I needed more information.**

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1 Q. Did you tell Mrs. Dobrich that you did not
2 want to put it on the agenda for the next meeting but
3 you would consider putting it on for a subsequent
4 meeting?

5 **A. I don't remember just what I told her. I
6 remember when she called she woke me up. Because I
7 remember talking to her while I was laying in bed.**

8 Q. Well, when you told Mrs. Dobrich that you
9 would not put the item on the agenda for the next board
10 meeting, did you give her any indication that it might
11 be possible to put it on the agenda for a subsequent
12 meeting?

13 **A. I don't know what inclination I gave her. I
14 may have given her the inclination she needed to talk
15 to a different board member to see if they would agree
16 to put it on, on the agenda. I don't remember just
17 what I told her.**

18 Q. I'm going to show you -- while I'm finding the
19 document, we are going to change the tape. I am almost
20 done, by the way.

21 VIDEO SPECIALIST: Going off the record
22 at 5:58 p.m.

23 (Pause.)

24 VIDEO SPECIALIST: Going back on the

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1 **A. I don't remember saying that.**
2 Q. Do you ever listen to WGMD?
3 **A. Yes.**
4 Q. That's a local talk radio station. Do you
5 know Dan Gaffney?
6 **A. I know of him. I don't know him personally.**
7 Q. Did you at any time leading up to the
8 August 24th board meeting call Mr. Gaffney?
9 **A. No.**
10 Q. At the August 24th board meeting, when you
11 asked Dr. Hattier to open the meeting with a prayer, do
12 you recall that the crowd in the room where you were
13 erupted into applause?
14 **A. Yes.**
15 Q. And there was also cheering, was there not?
16 **A. I guess so.**
17 Q. Do you recall when, after Mrs. Dobrich spoke,
18 her son, Alex, walked to the podium?
19 **A. Yes.**
20 Q. Do you recall that there were boos from the
21 crowd?
22 **A. No.**
23 Q. Do you recall that Alex was unable to speak
24 because of the reaction of the crowd?

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1 record at 5:59 p.m.
2 BY MR. ALLINGHAM:
3 Q. What I have put in front of you is something
4 called an amended complaint, which is a statement of
5 the claims of the plaintiffs in this case.
6 And I'd like you to turn to Page 18 of
7 the document, please.
8 Look at Paragraph 84. This is in the
9 context of the first board meeting at which
10 Mrs. Dobrich spoke, which took place on June 15th.
11 Paragraph 84, "There is an allegation
12 that Defendant Hobbs announced that the district's
13 lawyer was absent from the meeting because of a death
14 in the family. And then, "Defendant Walls previously
15 had mentioned that no one had complained about
16 graduation prayer before the Dobriches."
17 I have two questions on that statement.
18 The first one was, is it true that as of June 15th,
19 2004, no one had complained about graduation prayer in
20 Indian River?
21 **A. Not to my knowledge.**
22 Q. Okay. And secondly, do you recall having said
23 at the June 15th meeting that no one had complained
24 about graduation prayer before the Dobriches?

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1 **A. I don't know why he was unable to speak. I
2 assumed he was emotional.**
3 Q. Do you recall someone yelling from the crowd,
4 take your yarmulke off?
5 **A. No.**
6 Q. Do you recall that Alex was wearing a
7 yarmulke?
8 **A. Could have been.**
9 MR. ALLINGHAM: Thank you, Mr. Walls.
10 I'm finished.
11 THE WITNESS: Good.
12 MR. SHAU: No questions.
13 VIDEO SPECIALIST: Going off the record
14 at 6:03 p.m.
15 (Witness excused.)
16
17 (The deposition concluded at 6:03 p.m.)
18
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1	State of Delaware)	Page 176
2	New Castle County)	
3	CERTIFICATE OF REPORTER	
4	I, Terry B. Burke, RMR-CRR and Notary Public,	
5	do hereby certify that there came before me on	
6	Wednesday, October 25, 2006, the deponent herein,	
7	HARVEY L. WALLS, who was duly sworn by me and	
8	thereafter examined by counsel for the respective	
9	parties; that the questions asked of said deponent and	
10	the answers given were taken down by me in Stenotype	
11	notes and thereafter transcribed by use of	
12	computer-aided transcription and computer printer under	
13	my direction.	
14	I further certify that the foregoing is a true	
15	and correct transcript of the testimony given at said	
16	examination of said witness.	
17	I further certify that I am not counsel,	
18	attorney, or relative of either party, or otherwise	
19	interested in the event of this suit.	
20	DATED:	
21		
22		
23		
24		

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1	REPLACE THIS PAGE
2	WITH THE ERRATA SHEET
3	AFTER IT HAS BEEN
4	COMPLETED AND SIGNED
5	BY THE DEONENT
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